REPORT RESUMES

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EMPLOYER-EMPLOYEE RELATIONS IN THE PUBLIC SCHOOLS.

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STATE UNIV. OF N.Y., ITHACA

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THIS VOLUME CONTAINS PAPERS PRESENTED AT THE CONFERENCE ON EMPLOYEE RELATIONS IN THE PUBLIC SCHOOLS, HELD JULY 14-15, 1966, AT CORNELL UNIVERSITY UNDER THE AUSPICES OF THE NEW YORK STATE SCHOOL OF INDUSTRIAL AND LABOR RELATIONS AND THE NEW YORK STATE EDUCATION DEPARTMENT. THE PURPOSE OF THE CONFERENCE WAS THREEFOLD--(1) TO PROVIDE A FORUM WHERE TEACHERS IN THE FIELD OF PUBLIC EDUCATION IN NEW YORK STATE COULD EXPLORE TOGETHER THE PROBLEMS AND OPPORTUNITIES WHICH THE RECENT LEGISLATIVE FAILURES DEVELOPED, (2) TO MAKE RECOMMENDATIONS FOR A STATUTE AND A SET OF PROCEDURES THAT WOULD SERVE TO PROTECT THE EMPLOYEE RIGHTS OF TEACHERS AND CONTRIBUTE TO THE QUALITY OF THE EDUCATIONAL ENTERPRISE, AND (3) TO BRING TOGETHER SOME OF THE LEADING SPOKESMEN IN THE AREA TO SHARE THEIR THOUGHTS WITH A LARGER AUDIENCE OF EDUCATIONAL PRACTITIONERS. THE THREE MAJOR AREAS IN WHICH THE PAPERS WERE WRITTEN INCLUDE--(1) ASPIRATIONS OF TEACHERS AND CONCERNS OF SCHOOL BOARDS AND ADMINISTRATORS, (2) APPROPRIATE LEGISLATION COVERING THE EMPLOYMENT RELATIONSHIP IN PUBLIC SCHOOLS, AND (3) THE RESOLUTION OF IMPASSES IN TEACHER NEGOTIATIONS. THIS DOCUMENT CONTAINS PAPERS PRESENTED AT THE CONFERENCE ON EMPLOYEE RELATIONS IN THE PUBLIC SCHOOL (ITHACA, NEW YORK, JULY 14-15, 1966) AND IS ALSO AVAILABLE FROM DISTRIBUTION CENTER, NEW YORK STATE SCHOOL OF INDUSTRIAL AND LABOR RELATIONS, CORNELL UNIVERSITY, ITHACA, NEW YORK 14850, SINGLE COPIES FREE TO NEW YORK STATE RESIDENTS, ADDITIONAL COPIES AND OUT-OF-STATE ORDERS $1.00. (HW)

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Wolf

Employer-Employee Relations in the Public Schools

edited by

Robert E. Doherty

EA 001 314

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Employer-Employee Relations in the Public Schools

Edited and Compiled by
Robert E. Doherty

January 1967

NEW YORK STATE SCHOOL OF INDUSTRIAL AND LABOR
RELATIONS, CORNELL UNIVERSITY, ITHACA, NEW YORK

This conference was held from July 14 to 15, 1966, at Cornell University and was under the auspices of the New York State School of Industrial and Labor Relations and the New York State Education Department.

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Introduction

The genesis of the Conference on Employee Relations in the Public School stems from Commissioner James Allen's and the New York State Education Department's long-time concern for harmonious employee relations in public education and the School of Industrial Relations' interest in providing more meaningful educational services to school boards, administrators, and teacher organizations.

Even though relatively few teacher organizations in New York State have established formal employment arrangements with their respective school boards, there is nonetheless a considerable amount of interest and/or apprehension about the changes taking place in public school employer–employee relations. And while New York State does not, as of January, 1967, have a statute granting collective bargaining rights to public employees, it does not appear that this will long be the case. A few days before the conference began on July 14, 1966, the New York State Legislature adjourned after having passed two bills, one in the Assembly and one in the Senate, extending bargaining rights to teachers and other categories of public employees. It was the failure of the two houses to reach agreement on the details of statute, not the underlying principle, that prevented passage. A year earlier the legislature had passed a public employee collective bargaining bill only to have it vetoed by Governor Rockefeller.

The purpose of the conference, then, was threefold. One was to provide a forum where leaders in the field of public education in New York State, representing a variety of organizations and points of view, could explore together the problems and opportunities this new development presented. Another was the hope that out of these discussions could emerge some recommendations for a statute and set of procedures that would not only serve to protect the employee rights of teachers, but at the same time contribute to the quality of the educational enterprise. The final purpose was to bring together some of the leading spokesmen in this area and have them share their thoughts and puzzlements with a larger audience of educational practitioners. The papers which make up this volume show clearly that these spokesmen are not of one mind.

Participating in the conference, in addition to Commissioner Allen and Helen Power, George Weinstein, Carl Pforzheimer, and Thad Collum of the New York State Board of Regents, were the elected and executive officers of the New York State School Boards Association, The Empire State Federation of Teachers, The New York State Teachers Association, The New York State Association of School District Administrators, the New York State Council of School Superintendents, and representatives from the State Education Department.

Robert E. Doherty

Ithaca, New York
September 1966

Introductory Remarks

Introduction

Robert F. Risley[*]

THE PROBLEM of the employee relationships in public schools is one that has implications, not only for the administrative structure of the schools and school operation but also for the educational process itself. It is one which should be of as much concern to the people of the State as any other issue at the moment.

The School has been interested and active in this problem area and in the area of public employment relationships generally. We have had two conferences, one with the Joint Legislative Committee a couple of years ago exploring some of these problems, and one last summer with the New York State Teachers Association. We have also met and worked in various ways with many of you and the organizations you represent.

The primary function of this conference, as I see it, is to focus on the various issues and problems to see where we stand. We hope that out of our discussions we will get a better idea of the kind of educational program that could be effective and helpful to all concerned.

We are, of course, very pleased to have the opportunity to work with the Education Department and Commissioner James E. Allen directly in a cooperative educational program of which this conference, in effect, is really the first step. The interest in this conference has demonstrated both to us and to the Education Department, that we have apparently in one way or another offended a large number of people who felt they should be here but who aren't. We decided initially that if we were to have a conference and a program in which there was an opportunity for not only speeches but also discussion and reactions by representatives of various groups directly concerned with this problem, the conference would have to be limited

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[*] Assistant Dean for Extension and Public Service, New York State School of Industrial and Labor Relations, Extension Division.

in size. We asked each organization to suggest those who should represent it and have invited those persons here to this first conference. In the coming year we hope to offer additional conferences and regional programs which will bring much of this material to a statewide audience.

It is clear and has been for some time that the problems and the questions of employee relations in the government service are going to be critical issues. Various steps have been taken at different levels of government, programs have been worked out, and arrangements have been made for meeting these problems. At the School a number of the people on the faculty have been concerned with, and do research regarding, this problem. We have been working with both employer and employee groups for some time. Professor Doherty, who comes from a public school background and who is serving as Chairman of this conference, has been involved in this area for some time, collecting materials, information, and working with individual organizations. We believe that we are now at a stage where we can make some general contribution.

The problem itself is demonstrated by the fact that a year ago a revision to the Condlin-Wadlin Act was passed and subsequently vetoed by the Governor. This year it was impossible to get a bill passed. These two "non-events" indicate that the problem will be extremely difficult to solve at the legislative level. Yet this is an area in which something must be done. The question is not one of whether anything is going to be done but rather what is to be done.

Regarding the problem of public employer–employee relationships, there are some basic thoughts I would like to suggest. One is that public employer–employee relationships generally can be, of course, equated in many respects to private employer–employee relations, but they also have some special concerns and aspects. The report of the Governor's Committee clearly identified some of these. There is, however, a great tendency to translate and transfer the devices from the traditional private collective bargaining, which is a method for providing balancing power between competing economic groups, into the public sector. Such effort requires modification in practices and policies to take into account some special aspects of public employment.

At the same time it seems clear that the argument that governmental bodies may not, in fact, institute collective bargaining or some other type of formalized employee relationships, is one which does not have any real validity. Such arrangements do exist, they have existed, and they will continue to exist and increase in various forms. The question is how can these arrangements be developed and structured so that they can operate with the least amount of problems.

Third, when we come to the schools and the structure of public education there are even more difficult special problems. The nature of the school as an organization, public schools as well as other schools including universities, is different from most organizations. The lines of concern and responsibility between faculty members and administrators are not clearly drawn. The roles and interests of the various groups, teachers, administrators, board members, etc., do have a special character. When this is put together with the fact that the relationships between local schools, the Education Department, and the state are of a special nature it becomes obvious that the problem demands very careful consideration. We must seek ways in which the employee relationship may be carried on best without jeopardizing the educational enterprise.

As a result of these factors and despite the problems and the criticism of the legislature for not amending the Condlin-Wadlin Act, it seems to me in some ways fortunate that, from the point of view of the schools and school personnel, there is still some opportunity and time to give further study and consideration to the problem. Perhaps we shall be able to propose here a better program for dealing with it.

Now as to the nature of this conference, it is our hope that there will be full and frank discussion of the issues and problems. We will appreciate the candid views of the people here. From these discussions perhaps we can identify some of the areas of agreement and some of the areas of disagreement and, in the process understand better the positions, the viewpoints, and possibilities of reasonable compromise in areas of disagreement.

We are planning to prepare a report of this conference, one which can be made available generally but which specifically will be useful background material for the regional programs that we expect to conduct.

From the point of view of those of us at the School, it is our hope that this can be a really fruitful landmark conference.

With these introductory remarks from the School I would like to introduce Commissioner James E. Allen. Commissioner Allen has an obvious concern about the problems and issues that we are going to be talking about. Indeed, it is this overall concern for the continued growth and development of a sound educational program in the State that led him to take the initiative in asking that we embark on this venture. It is my pleasure to present to you now, Commissioner Allen.

Interest and Role of the State Education Department with Respect to Employer and Employee Relations

James E. Allen, Jr.[*]

EMPLOYER–EMPLOYEE relations have, of course, been a concern of the State Education Department since Gideon Hawley was appointed first Superintendent of Common Schools under the Common School Law of 1812. I have no substantiation for this opinion, but I suspect that such relations in his day were comparatively simple, carried on with little identification or discussion. In our rapidly changing society, however, the situation is quite different. Any discussion of this phase of school operation during those early years, or even up to a decade ago, would be so far removed from the developments of today that it would have little relevance to the purpose of our meeting here at Cornell.

Since the mid–1951's so much has happened in public school employer–employee relations that it should really be considered an entirely new field. Whether you pick up a popular journal or one of scholarly orientation, articles dealing with such topics as professional negotiations, collective bargaining, teacher power, mediation, impasse procedures, and arbitration, leap out and command your attention. These articles are symptoms of the stresses and strains which characterize employer–employee relations in governmental circles, of which our public school system is a part.

It is my hope that by exploring this subject at this conference, we shall all come to a better understanding of the full range of factors affecting employer–employee relations in our public schools. Let us recognize at the outset that while we are limiting our discussion here to those employees who are teachers, there are many non–instructional employees of school districts whose interests and needs deserve the same thoughtful consideration. At this conference we are concentrating on the teachers because they constitute the largest group of employees.

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[*] **Commissioner of Education, State of New York.**

In this country today there are more than 43 million youngsters attending the public schools. The rapid growth of enrollment in recent years and certain other factors have created a situation in which communication between administrators and teachers is at the same time more necessary and more difficult than ever before. The complexity of organization and administration in many of today's school systems tends to separate teaching and administration, causing teachers to feel that they are more and more removed from policy-making and that they need the opportunity to participate in considerations and decisions that concern them and their work.

In order to answer this need, teacher organizations have turned to what we will refer to as *collective negotiations*. I have chosen the term *collective negotiations* in the hope that it is representative of the positions of the various groups present here today; it may be defined as a method of communications and participation.

There is little historical background to this movement. Prior to 1960, not a single state authorized collective, or any other form of, negotiations between teacher organizations and boards of education. There were, at that time, in the educational literature, only vague references to some sort of teacher negotiations and the improvement of staff relations. Prior to that pivotal year, some teacher organizations were, however, beginning to lay the groundwork for the phenomenal developments since that time. Those who are connected with either the National Education Association affiliated groups or the American Federation of Teachers will agree, I believe, that prior to 1960 neither group conducted a truly organized drive to negotiate collectively. We are all familiar with the well publicized and rapidly unfolding activities which took place in New York City from 1960 through 1962. There is no question in my mind that the emergence of the United Federation of Teachers as the sole bargaining agent for New York City's classroom teachers has had a far–reaching effect on all teacher organizations.

Since 1962 all of us in education, whether we are directly connected with teacher organizations, boards of education, or local or state administrations, have been undergoing a period of fundamental, if not agonizing, reappraisal. For example, in 1961 the National Education Association's policy made no reference to collective action. In 1962 the NEA first began to talk of "professional negotiations," and the "right . . . to participate in policies of common concern . . . ," and first spoke of "professional sanctions." This evolution of policy has now reached the point where the National Education Association advocates the concept of exclusive recognition and written agreements between teacher organizations and school boards.

There are those who contend that this evolution in the NEA policy is a result of the pressure of the Federation of Teachers, a recognition on the part of the Association that the Federation represents a major political and educational power, which was right in its position all along! It is hardly necessary to say that the NEA and its affiliates disagree sharply with this view.

Further evidence of the widespread concern about employer–employee relations in public employment is seen in the recent activities of state legislatures. Wisconsin adopted legislation in this field in the early '60's. During the 1965 legislative sessions, employee associations in 15 different states sponsored legislation affecting public employer–employee relationships. In nine of these states some form of legislation concerning collective action passed the legislature. In two of them, one of which was New York, this legislation was vetoed. As a result eight states had by last year adopted laws under which teacher–school board relationships would be governed.

During the 1966 sessions a number of other states have considered similar legislation and at least three have adopted laws. In New York under the sponsorship of the New York State Teachers Association, a bill was introduced which has been popularly referred to as the Dominick–Rose Bill. This bill was specifically designed to govern the teacher–school board, employer–employee relationships. Midway in the legislative session, largely as a result of what has been popularly referred to as the Taylor Committee Report, the Governor recommended a "public employee relations" bill, which would govern the employer–employee relations of all public employees in the state. As we all know, the legislature did not adopt any new law this year but it is certain that next year the subject will again be under consideration.

What are the factors which have caused employer–employee relations to emerge as such an important aspect of school operation? It would appear to me that there are several:

1. There has been a national trend during the past 35 years toward more consideration by employers of the interests and needs of

their employees. This is an outgrowth of the basic American desire for the maximum of liberty and dignity for each individual.

2. Reorganization and rapid growth of school districts have resulted in a more complex district structure, giving the teacher the feeling of being increasingly removed from top administration and board of education policy making.

3. There has been an increasing awareness that teacher organizations should not continue to be primarily nationally oriented or state oriented but should have strong leadership at the local level.

4. Rapid and dynamic changes have occurred in the attitudes of the individual teacher and his desire to be more effectively involved in the decision-making process. Economic considerations have hastened this development since increased numbers of men have entered the teaching profession. Generally they become heads of families and feel the need of higher salaries.

5. Intense organizational rivalry has developed between the major teacher groups to demonstrate how well they can produce tangible gains for their constituents.

Increasingly in recent years school districts have requested the services and advice of the Education Department in the solution of administrative, board policy, and employee relations problems. We have, of course, always been vitally interested in such problems. Occasionally, we have become involved in specific local situations where an impasse has developed. Requests for our advice and assistance traditionally have come from boards of education or school administrators.

When the Department responds to such requests and advises local officials, its actions can be, and sometimes are, misinterpreted. It is understandable that each party to a dispute on such a sensitive matter would like to enlist the aid of an agency with the considerable authority of the Education Department. Each of the parties involved is tempted to interpret our words and actions as support for its side in a controversy, which may at times have led to the impression that the Department is biased in its view. We have, for example, heard that teacher groups have, in some instances, felt that we supported the position of the board—or vice versa. I wish to assure you that we do not have a bias, except the strong determination that the quality of education be at all times maintained at a high level.

It is our responsibility to consider the needs and concerns of all who play a part in the operation and maintenance of our school.

Dissatisfaction, low morals, etc., among any segment of our educational system can harm all segments, and we should correct the harmful conditions. Our first responsibility is, of course, to the children—and we must at all times center our attention on their well-being.

At the present time, a member of our staff is conducting an extensive research project into the characteristics of professional negotiations and collective bargaining in our State. Through this project we hope to gain some insights into the effects of the activities of teacher organizations upon the student, upon the nature of the superintendent's role, and upon the total school system. We also hope to be able to determine if certain attitudes and practices of boards of education encourage or discourage teacher organizations, contribute to the effectiveness of such organizations and affect the relationships of the boards and teachers with their chief school officers.

The role which the State Education Department will play in the future is not yet clearly discernible. It seems likely that boards of education, administrators, and teacher organizations will seek more assistance than they have in the past. The Department is seeking to prepare itself to respond with maximum effectiveness to such requests, strengthening its staff in numbers and in competence in accordance with the need.

This is a time of evolving patterns in the field of employer–employee relations and the Department's role will be affected by the determinations which are made. There is the basic question of whether legislation is *necessary* with respect to teachers and school boards. Would it be better to leave the whole matter to the education community? Can it be left there? If legislation is judged to be necessary, then what should be its character and scope?

If a law such as envisioned in the Taylor report were enacted, the Education Department would have no direct responsibility for its administration, inasmuch as that function would be vested entirely in a public employee relations board. Is this good or bad?

If a law drawn along the lines of the Dominick–Rose Bill were enacted, the Department would become an employer–employee relations agency, but for teachers only.

If the concept embodied in the Lentol–Rossetti Bill were to be adopted, the Education Department would, upon the request of the employer, supervise elections to determine the bargaining agent, seek to resolve disputes, assist in selection of a fact–finding body when this was required, and perform other functions of a labor relations agency.

By the next session of the Legislature, other proposals will no doubt be advanced.

If legislation is judged to be the answer to problems in this field, the education community has an obligation to evolve suggestions for constructive legislation which contribute to the welfare of the schools generally as well as to the best interests of the profession.

While the Department will, of course, always strive to discharge competently the responsibilities assigned to it, we would prefer to continue to play an advisory, rather than an administrative, role in the employer–employee relationships in school districts. It is my hope that our deliberations at this conference will help to clarify the possibilities of constructive action by the Education Department as well as by all the organizations represented here.

When we leave here tomorrow evening, we should all have a better understanding of each other's positions and problems. We should know more about the meaning of the duty placed by law upon boards of education to be responsible for policy decisions of their districts. We should be clearer as to the role of the school superintendent, and we should understand better the desire of teachers to share in the decision–making process. Much good can come from these discussions.

The overriding concern which must motivate us all is the educational welfare of the children. The schools exist for one purpose and for one purpose only, to serve the students and to provide each of them with the opportunity to secure the best possible education suited to his needs, abilities, and desires. We cannot tolerate any action which will place special interest above this objective. On the contrary, all of us must strive to find the best ways to work together to enhance the effectiveness of our schools, for education is surely the first business of our society in this second half of the Twentieth Century.

Aspirations of Teachers, Concerns of School Boards and Administrators

Introduction

Robert E. Doherty[*]

Everyone in this room has a vested interest in the direction in which the employee–employer relationship in public education is moving, and we are all curious as to how it is all going to end. If, indeed, there is or ever can be a conclusion or final agreement in this area.

The members of the panel represent some of the strongest and most articulate of the vested interests: teachers, administrators, school boards. We have asked Mr. Goold and Mr. Shanker to indicate what employment conditions teachers aspire to nowadays (and I won't attempt here to distinguish between employment conditions and purely educational matters), and how the organizations they represent hope to assist teachers to achieve these aspirations. Mr. Dyer and Dr. Reason have been asked to tell us what concerns school administrators and board members have about recent developments in the employment relationship in the schools, particularly about those instances where teachers have evidently decided that the best way to achieve their objectives is through formal, bilateral determination of employment conditions.

My understanding of bilateral determination is that it makes a strong assumption that teachers or any other group of employees have a right to be equal partners in determining their working conditions. The pattern is somewhat as follows: A single teacher organization within a school district is selected as the exclusive representative of all teachers, or whatever larger group of certificated personnel makes up the bargaining unit. Representatives of the teacher organization then sit down with representatives of the board and together they attempt to work out an arrangement as to what the working conditions of the members of the bargaining unit shall be. The process is usually called negotiations or bargaining. When the fruits of these discussions have been reduced to writing and signed by both parties, which seems to have become a rather common practice, this document is usually called a collective agreement or contract. The subject matter or scope of the agreements range from those that contain single items—a new salary schedule—to the very comprehensive documents such as those that have been agreed to by teacher organizations and school boards in New York City, New Haven, Yonkers, and Newark. It looks as though it is the latter that more and more teachers are getting excited about.

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[*] **Associate Professor, New York State School of Industrial and Labor Relations, Cornell University.**

As I said earlier, probably everyone here has a vested interest in these developments, whether it be as a representative of the State Education Department, a school board, a school administration, or a teacher organization. In the few minutes I have been allocated I should like to raise a small voice in behalf of still another vested interest—that large, unorganized, semiarticulate mass of taxpayers, parents, and all other beneficiaries (some have been unkind enough to say victims) of our public education system. What's in it for us?

I should like to concentrate on just one rather obvious and painful area—it looks as though it is going to cost us more money. Teachers don't usually organize, make demands, and press for signed collective agreements if they are satisfied with their working conditions. In those cases where agreements have been signed one usually finds that salaries have been increased, that there are provisions for smaller classes and for teacher aides, to mention just a few of the economic items teachers and school boards have agreed to in recent years. There is no escaping it, unless certain features of the educational program are curtailed, and nobody seems anxious to do this, these improvements in working conditions mean bigger budgets and likely as not higher tax rates. They also mean, I believe, an improvement in the educational enterprise and are very much worth the price we pay in increased taxes. And now having said that, I realize that I have lost a very large percentage of that vested interest group of which I am the self-appointed spokesman.

I'm sorry to lose them, but the fact remains that it does take money to build quality into public endeavors. It takes a lot of other things too, of course. But let's take salaries as a case in point. School boards and certainly state legislatures find it very difficult to rid themselves of the notion that public school teaching is an occupation for genteel ladies with modest inheritances and no one but themselves to support. Indeed this was the case thirty-five years ago when about 85 percent of all certificated public school personnel were females. But that is no longer the case. Today about 40 percent of our teachers are men, most of whom are married, or plan to be, and hope to feed, clothe, and educate their children in proper style. In the last decade the number of men teachers increased by 93 percent as against a 37 percent increase for women.

Our salary schedules, it seems to me, do not reflect this change. Our present state minimum salary schedule in New York State starts at $5200 and tops out at $8500 for those teachers with a fifth year of preparation and thirteen years of service. The state minimum happens to be *the* salary schedule in my school district. I suspect that there are a great many other school districts in the state where this is also the case. It isn't nearly enough. Small wonder that according to a recent NEA survey almost half our men teachers moonlight. I suppose its none of my business how teachers spend their free or non-school time, but I would like to believe a lot of them would rather be reading a book or attending a lecture than tending bar or driving a taxi. At least I think it is in my interest and in the interest of that group I am trying to represent that teachers have an opportunity to use leisure time creatively.

It seems to me the highest form of irony that the same legislative body that set these minimum salary levels, presumably because it felt that these levels were adequate for this crucially important public and professional service, could a year later in its Medicaid program say to a significant portion of public school teachers—unless you make more money than that you are medically needy. To illustrate: As I understand the law, a public school teacher working in a school district that has adopted the state minimum salary schedule, and who happens to be married with two children, has a Masters degree and has completed four to five years of experience might very easily qualify for public assistance.

So my vested interest group, which, the longer I talk, grows smaller and smaller, would say that collective bargaining for teachers, painful and disruptive as it sometimes is, is in the long run consistent with our aspirations. It may be about the only way in which we can be shaken from our niggardliness and our lethargy. It may be the only way in which we can be persuaded to support the schools and our teachers in the way they should be supported.

But in accepting collective bargaining we might find that there are some things in the package we didn't order and don't want. Grievance machinery, designed to protect teachers from capricious or arbitrary behavior of administrators, can be used as a political weapon. Seniority rights and the principle that certain teaching and non-teaching assignments should be rotated, both understandable objectives of teachers, sometimes rob the administration of the flexibility it needs to run our schools efficiently. Collective agreements seem also to freeze into the system even more solidly than before a rigid, and (from a public viewpoint) irrational, system of compensation.

My group is concerned that school boards and administrators retain a high degree of authority and flexibility. They are *our* representatives and we wouldn't like it at all if we found they had bargained away those prerogatives that can only spring from the commonweal.

And that is about all I have to say. I hope that during the course of unburdening myself I have been somewhat successful in setting the stage for the following discussion.

Concerns of School Administrators about the Manifestations of Teacher Aspirations when They Result in Some Form of Collective Negotiations

Paul L. Reason[*]

I. Background for Remarks

I HAVE been asked to comment on the concerns of school administrators about the manifestations of teacher aspirations and particularly when they result in some form of collective negotiations. As basis for my comments, I submit that the City School District of Rochester decided two years ago that it would recognize a teacher representative and negotiate with this representative as far as teachers' salaries and working conditions are concerned. In Rochester, the Rochester Teachers Association won the representation election and for the past two years we have negotiated with this organization. I had the good fortune to serve on the Negotiating Committee representing the Rochester Board of Education for two years together with the Assistant Superintendent for Administration, the Coordinator of Personnel, and the Legal Counsel for the Board. The comments which I make, however, are my own and should not be construed as representing any official viewpoint of the City School District of Rochester.

II. Administrators on the Horns of a Dilemma

As you progress through bargaining session after bargaining session, it soon becomes apparent that as an administrator you find yourself on the horns of a dilemma. In the first place, you have probably been a teacher yourself and even though you may now be somewhat removed from the classroom you still consider yourself a teacher. Therefore, you, by the very nature of your position tend to be sympathetic with the teachers' demands. For who can deny the facts in the matter! Teachers have for years been woefully underpaid and even today a good teacher is still underpaid in terms of the service which he or she renders and the impact made. So, in the first place, you find yourself sympathetic to the teachers' demands for adequate salaries. As a school administrator, however, you know that there are practical financial limitations on how fast and how far you can go in meeting the demands for adequate salaries; yet, you realize that personnel is the most important ingredient in the effective operation of any organization. If you cannot attract and hold top personnel in your teaching positions your educational program will suffer. While this is so, you also know what has always been true, and is even more important today, that good teachers can make their greatest contributions only when they have adequate tools with which to work, such as well rounded programs, and quality supplies, equipment, and building facilities in sufficient quantities.

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[*] Assistant Superintendent of Business Affairs, City School District of Rochester.

But, with it all, you are management, and you represent the board of education, and the board of education in turn is responsible to the taxpayers of the school district and has a financial framework in which it must operate. If funds were unlimited, the problem would not be so great since you could simply add on the programs that are necessary and add on to teachers' salaries as necessary. There would really be no serious problem! Unfortunately, however, funds are not unlimited and you must face the hard reality of deciding where money should be spent to do the most good. Faced with such decisions, it seems to me that in the final analysis we must come back to the basic question of what is best for the children in the school district, and evaluate the teacher demands and the demands for various programs in the light of this standard. This is what we try to do in the City School District of Rochester.

With respect to demands concerning working conditions, I think the situation is somewhat different. While many of these demands have serious financial implications and some of the same kinds of decisions have to be made with them as with the salary demands, there is also a different concern on the part of the school administrator. This is the concern over what yielding to such demands does to management's fundamental responsibility to manage the educational enterprise.

As a school administrator, you are management. In the final analysis, management is held responsible for the operation of the schools and management, not the school teachers, is judged deficient if the public considers the schools to be operating ineffectively. If management has this responsibility, then it must also retain commensurate authority to carry out this responsibility. I think there is a very genuine concern on the part of school administrators about the extent to which acceding to teacher demands on working conditions affects the basic responsibility of management.

While I am sure that all school administrators have a great variety of concerns about this movement in teacher negotiations, it would seem to me that the two most important concerns are the effect of teacher demands upon the development and maintenance of other educational programs and services, and the effect of teacher demands upon management's responsibility for the operation of the school system. I should like to talk briefly about each of these.

III. Effect of Teacher Demands upon the Development and Maintenance of Other Educational Programs and Services

I can best illustrate my concern for the effect of teacher demands upon the development and maintenance of other educational programs and services by recounting what transpired in the City School District of Rochester during our just completed negotiating sessions and budget development.

Rochester is a forward looking school district and has many worthwhile and desirable educational programs in operation. In addition, in 1965–66, it instituted a rather extensive use of teacher aides to assist teachers in various tasks. This was as a result of negotiations which took place the previous year. Rochester is a relatively wealthy community with some very fine industries and it spends well on education. Yet, the funds are not unlimited and we are faced with a constitutional limitation on the amount of money that can be raised for current operating expenses. The City of Rochester can raise only 2% of the average of the past five years of true value for both city and school district purposes. Over the past few years, there has been about a 50–50 split of the local tax on real estate between the city and the city school district. However, we have also been right at the limit for the past few years. The only additional revenue coming in from local real estate tax sources comes from any increases in the assessed valuation of the city. Thus, before any demands were placed upon us for salary increases by the Teachers Association, we knew that we had limited funds with which to negotiate on these demands. We also knew that we had many other additional demands over the previous year.

While several teacher demands were presented by the Rochester Teachers Association, it soon became apparent to both parties that it was necessary to zero in on the question of salaries before any of the other demands could really be negotiated. The matter of salaries became paramount. To give some idea of the size of the demand by the Rochester Teachers Association, their first salary proposal called for a beginning salary of $6250 as opposed to our beginning teacher's salary of $5150 and a top salary of $13,438 as opposed to our existing top salary of $10,325. In the process of proposal and counter-proposal, we finally arrived at the position whereby the city school district was offering a beginning salary of $5400 and the Rochester Teachers Association had come down in their demands from $6250 to $5900. While the administration was sympathetic to the teachers' request for the higher salary, in view of the existing programs and limitations on funds, it was impossible for the city school district to go beyond its offer of a beginning salary of $5400.

Resorting to the impasse procedures contained in the agreement between the Rochester Teachers Association and the Board of Education, the Board and the Association jointly appointed an *ad hoc* committee to investigate the matter and make recommendations. In the meantime, the Teachers Association had held a mass meeting and the teachers were urged to submit their signed resignations to the President of the Teachers Association who would hold such resignations until the latter part of August at which time they would be submitted to the Superintendent if the teachers' salary demands were not met. The President of the Association indicated that he had approximately 1400 such signed resignations in his possession. This, then, was the threat which was held over the Board of Education.

The *ad hoc* committee completed its investigation and recommended a salary schedule for 1966–67 which called for a beginning salary of $5700 and further recommended that in 1967–68 the beginning salary be moved to $5900.

In order to offer the $5400 starting salary, many hard decisions had to be made in order to prepare a budget that kept within the constitutional limitations imposed upon the city school district. Thus, when the *ad hoc* committee made its recommendations, the Board was faced with the choice of either ignoring the recommendations or accepting them or some modification and making further cuts in other areas of the budget. There was no leeway to provide additional salaries without such further cuts in the budget. In considering this question, the Board held that personnel is the single most important ingredient in the operation of a school system, and therefore it accepted the $5700 starting salary for 1966–67 and made further drastic cuts in other sections of the budget in order to meet the salary demands.

The example brings into focus what I think to be the most central question that bothers school administrators in this whole area of teacher negotiations: How do you meet the salary demands of the teachers and still maintain a balanced educational program?

This question becomes more and more critical. For it can be argued very persuasively that our teachers are still underpaid and deserve even more than the salaries now being paid them. For example, in the city of Rochester, a person beginning employment with a B.A. Degree with some of our local industries is paid a salary of $7700. This is still $2000 more than we are able to pay a beginning teacher with a Bachelor's Degree even after the substantial increase just made in our salary schedule. Yet, we must compete with other professions and businesses for top people.

However, when a school district is faced with limitations on tax resources how can it possibly meet all of the demands that are being imposed upon it? Many of the cuts which we had to make in the budget for 1966–67 in Rochester will be felt badly during the course of the year and in some instances the effects will be felt in subsequent years. For example, we cut out the purchase of all equipment except for extreme emergencies and had to cut back very seriously on the maintenance of our school buildings. These are cuts which will have long reaching effects and we won't recover from them easily.

How do we meet the salary demands and, yes, salary necessities of teachers and still maintain a balanced educational program? The answer obviously is to remove some of the limitations and in one way or another make available more money. I think the very process of collective negotiations contains the basis for some of the answer. I see the negotiation process as serving an additional useful prodding function which eventually will help to get people to recognize the importance of education and that quality education like other things of quality requires a certain expenditure of effort and money.

IV. Effects of Collective Negotiations upon Management's Responsibility for the Operation of the School System

Now let us turn our attention to what, in my opinion, is the second most important concern of school administrators about the collective negotiation process, effects upon management's responsibility for the operation of the school system. Here again, this concern can be illustrated by a couple of experiences which we have had in our collective negotiations in the City School District of Rochester.

The first experience concerns the subject of teacher transfers. From the outset, the Teachers Association has sought to have the subject of teacher transfers included in the contract as a negotiable item. The school district has consistently held that this matter is not a negotiable item and has refused to agree to have it included in the contract. The Association admits that they have no quarrel with the present transfer policy, but they still would like to have it included as a negotiable item. Management has consistently held that the matter of teacher transfers is not negotiable on the grounds that management is held responsible for the operation of the school system. The right to transfer teachers has a direct bearing on the operation of the school system and as such is a fundamental function of management. That is, commensurate authority must accompany responsibility. We were concerned that if the matter of transfers became a negotiable item there could be a gradual eroding of management's authority to the point where the Teachers Association would demand a part in the transfer of any teacher. This, it seemed to us, would lead to an impossible situation in the management of the school system.

A second experience of ours in Rochester that illustrates this concern has to do with a decision made regarding data processing. During the negotiations just past, the Teachers Association pinpointed data processing, among other things, as being of lesser importance than teachers' salaries, and possibly an activity which could be cut in order to help produce funds for the teachers' salary increase. In the final resolution of the problem, a part of data processing dealing with automated report cards was cut from the budget to help provide necessary funds for the teachers' salary increase. Now that the budget has been adopted and the salary increase voted, a grievance has been filed to restore data processing of report cards.

It is not my purpose here to get you to agree or disagree with me on the question of including transfers as a negotiable item in teacher negotiations, or on whether data processing should have been cut. My purpose is to use these two experiences to illustrate what I think is a real concern on the part of school administrators as to just what are the ultimate effects of collective negotiations upon management's responsibility for the operation of a school system. Management is held responsible, and the teachers want more and more to say about the operation of the schools. Operation of the schools is also a concern of the teachers. Where lies the middle ground? I think much more thought and effort must be devoted to trying to delineate those aspects of operations which are strictly management decisions and those which are joint decisions to make. This is part of the collective negotiation process. But it is a real concern to school administrators.

V. Summary

In summary, in my opinion, the two most important concerns of school administrators about collective negotiations are:

1. the effect of teacher demands upon the development and maintenance of other educational programs and services, and
2. the effects upon management's responsibility for the overall operation of the school system.

These, I think, are real concerns, but I am confident that the collective negotiation process has inherent in it the potential for resolving these concerns as we gain more and more experience with it.

Aspirations of the New York State Teachers Association

*G. Howard Goold**

THE CONCERN of teachers over the conditions of their service and their desire for involvement in the formulation of school policy are not new in this decade. As early as 1951 the New York State School Boards Association and the New York State Teachers Association adopted a joint code of ethics, the first principle of which was recognition that teachers should be involved in matters of school policy.

The statement turned out to be more academic than real. Such teacher involvement as there has been has occurred by way of teachers appointed, or on rare occasion elected, to administrative councils. In most cases teachers were participating, if at all, as individuals rather than the elected representatives of their colleagues. Today teachers are seeking a more active voice in school policy and they are seeking it through their professional organizations. Today these professional organizations are imbued with a sense of vigor, of militancy, of mission, that goes beyond the narrow area of teacher welfare.

Economics is not alone at the heart of this concern. The central problem is that teachers want to be involved in shaping the education system. All of them have attended colleges and universities. They have seen how the faculty system works. They are convinced that their preparation and experience qualify them to play a more significant role in developing educational policy. This is what teachers are reaching for.

In 1954 we launched, in this state, an attempt to accomplish what we called a professional practice act. The underlying principle was to give teachers legal recognition of their responsibilities and rights in determining the boundaries and conditions of service in their chosen profession. The attempt failed, but the forces which motivated it have prevailed. In 1961 we began presenting legislation to provide a legal basis for teacher involvement. More recent bills have called upon the legislature to establish rules and guidelines for the process of collective negotiations between teachers and their employers. This year's bill requested the recognition of local teacher associations as representatives of the teachers along with the recognition of the freely elected representatives of these organizations as official spokesmen.

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* Executive Secretary, New York State Teachers Association.

Also, the Governor's Committee on Public Employee Relations submitted recommendations to the Governor and the legislature for legislation to protect the rights of public employees while assuring the uninterrupted continuance of the public service. The resulting legislation, which came to be known as the Taylor Committee bill, would have:

(1) given public employees the right of organization and representation for the purpose of negotiating conditions of employment;

(2) given public employees the authority to recognize, negotiate, and complete agreements with public employee organizations; and

(3) created a public employment relations board to assist in resolving employer–employee disputes through mediation and fact-finding.

It is regrettable that the legislature adjourned only a few days ago without favorable action on the committee proposals.

What I have seen happening from Buffalo to the eastern end of Long Island this year indicates to me that law or no law, the entrance of teachers into the process of policy formulation is already a reality. Negotiating with free professional organizations is taking its place as a part of the decision–making process in education.

The question is no longer whether or not, but only—how is it to be done? I am disturbed about the readiness of some to adopt a literal transplant of collective bargaining as developed in the private sector of our economy into the operation of our public schools. In the private sector, management, sitting on one side of the table, and labor on the other meet and attempt to carve up the profits of the enterprise to the satisfaction of both. However, in the public service, it is not profits but the responsibility for a public service that must be distributed. Also, in the traditional collective bargaining approach we face the difficulty of dealing with an agency which does not always have the power to implement its decisions.

In Buffalo, for instance, teachers first took their case to the school board. The board was convinced and sent its recommended budget, including the teachers' request, to the mayor. The teachers again presented their case. The mayor was convinced, but because of revenue limitations he cut about one-third from the budgetary increases requested by the teachers and the board of education. But still the matter had to go to the common council for its approval. In this case the council concurred with the mayor and the teachers accepted the council's determination as satisfactory. But what if the council had not approved or if the teachers had not become satisfied? The moral of the story is that you can't deal with management in public service because management, ultimately, is the people, and in the final analysis it is only the people directly or through their legislatures who have the authority to make and implement final decisions. We must remember that boards of education have limited powers, only those delegated by the state, and must restrict their negotiation to those items over which they possess the full power of implementation.

To further complicate the situation, teachers are a part of the state civil service. They are licensed to perform their teaching service under the supervision of the Education Department. Because the employee has a sanction, in this case a certificate proclaiming his right to work, and because his employment, tenure, sick leave, dismissal, retirement, and salary are under the aegis of the state, no clear, clean-cut, employee-employer relationship exists between teachers and local boards of education.

But if we are to have some form of negotiations, and I believe we must, the problem is further complicated by the fact that the role of the superintendent has not yet been sufficiently defined. It has been argued that the superintendent has a dual role in the negotiating process, acting as a go-between, a sort of two-headed being who must be all things to all people. I do not accept this definition of the superintendent's role. If negotiations are to be successful, the superintendent must be identified at the negotiating table for what he is, the representative of the board of education—the employer. This requires that boards of education openly give to their top administrators the assignment and the responsibility for negotiating their position. In the larger school systems it may well mean the hiring of an administrator well schooled in personnel relations and the art of negotiation.

And now, what should be negotiated? Hopefully, when school staffs achieve the professional stature to which they aspire, this question will not be too difficult. Issues to be negotiated can well include all aspects of the teacher's professional service. Such matters as salaries, tenure, leaves of absence, supplies and equipment, textbooks and curriculum are matters of legitimate concern to the professional teacher. To facilitate decision-making through negotiation we must first accept the practice in good faith. We must perfect the machinery of negotiation. We must define the rules by which the game is to be played and we must include provisions for avoiding impasse. Outside "fact-finders" are one means of avoiding the impasse. There is nothing new or foreign about calling upon someone to interpret or enforce the rules after they have been agreed to by the parties involved. The argument that bringing in outsiders necessitates surrendering the sovereign powers of the board of education is invalid. The efficacy of this is proven by the experience of cities like Rochester where members of the community successfully solved the problem of an impasse over salaries.

Finally, without some rational approach to meaningful negotiation, strikes, despite the talk of "banning" them, are going to continue. There is, in fact, no way of halting a strike when the would-be participants are determined that it will take place. Condon-Wadlin-type penalties will not curtail work stoppages. The no-strike responsibility of teachers can be upheld only if we succeed in finding another way of guaranteeing to teachers the free exercise of their constitutional rights as citizens.

Today the operation of our schools has become increasingly complex. The spirit of our times and the nature of our educational problems require the use of all the "brain power" we can muster. We need to tap the total resource of our profession as we seek answers to our common problems. As we continue to seek the enlargement of educational opportunity, we must do so in a spirit of cooperation and mutual respect within the education family of teachers, administrators, and school board members.

Aspirations of the Empire State Federation of Teachers

Albert Shanker[*]

Discussion of the goals and aspirations of a teacher's union begins with consideration of the status teachers have had in the past and continue to have. Teachers have occupied—and still occupy—a relatively low status both in the schools and in society at large, a veritable second-class citizenship. Only through organization, through the collective bargaining process, can teachers hope to improve their condition so as to approximate the rights accorded and enjoyed by other segments of our society.

This second-class citizenship of teachers can be viewed from three distinct vantage points: economic, professional, and civil. The economic citizenship of teachers deserves special emphasis because the teacher is first an employee. This seemingly obvious fact is frequently ignored or glossed over. For example, very few discussions of teacher salaries make a point that teachers have much the same right as any other segment in society to evidence a healthy concern with their own economic well-being; rather this concern is chalked up as being unprofessional. A healthy self-interest in economic well being has erroneously become equated with a lack of concern with students. This prevalent view—this myth in fact—is one which a teacher's union aims to dispel.

There is no conflict between professional concern and economic self-interest and well-being; rather than being mutually exclusive, professionalism and economic interest truly complement one another—one cannot be found without the other.

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[*] **President, United Federation of Teachers (New York City), Vice President, Empire State Federation of Teachers.**

Other professions are very much concerned with their clients yet they do not experience this supposed conflict. Doctors are expected to show great devotion to the welfare of their patients yet they do not find it improper to lobby actively and strenuously for legislation which in effect will insure a high economic standard for the medical profession.

The fact of the matter is that other professions see no necessary conflict between economic self-interest and their dedication to service. Only teachers generally share in a confused notion of the concept of "professionalism." This concept of "professionalism" is abused by teachers (and supervisors) in a number of ways to their detriment.

It is vital to realize that teachers are *employees in a school system*—working under uniform salary schedules, under uniform pension plans, and under uniform policies and regulations respecting sick leaves, holidays, transfers, discharge, and the like—and that they cannot gain any productive insight into their economic plight through a concept of "professionalism" applicable to the doctor, the lawyer, or the dentist. One is self-employed, the other is not. Little similarity exists between the necessary structure to provide sound economic status and first-class economic citizenship for salaried, employed, professionals on the one hand, and self-employed, fee-taking professionals on the other.

Salary improvement then becomes a prime goal. And first-class citizenship for teachers requires that teachers cease neglecting this economic self-interest. The economic well-being of the teaching profession must frankly and openly become a major concern of teachers and their organizations.

Economic well-being, however, is not confined to salary. It entails vacations, holidays, how many classes to teach per week, the size of class registers, and so on. It is this area—the so-called area of working conditions—that has been traditionally the province of unilateral determination on the part of paternalistic (at best) and tyrannical (at worst) school boards. Decisions to lengthen the school year or the school day or to increase class size have traditionally been made not only without agreement on the part of teachers affected but without even bothering to solicit that consensus. (At times this operates on a more subtle level when school boards go through *pro forma* rituals of consultation with teachers when in fact they are merely securing a ready acceptance of a *fait accompli.*) Teaching must be the largest occupation in the country where such basic economic decisions are made on a unilateral basis from above. No other field comes to mind where two million organized employees have so little to say in such elemental considerations as hours of work, vacations, and so on, as in education.

Perhaps the biggest burr for the average teacher in terms of working conditions involves the internal politics of a school or a school system. The most cursory visit to any teacher lunchroom will bring this home clearly. Teachers suspect that the method of making school assignments is not based on a sense of justice or on ability so much as on favoritism or discrimination. There is widespread belief, with more than passing justification, that perhaps Mr. Jones receives the most difficult class year after year because he dared be critical of the school principal at a faculty conference or because of some other "unprofessional" criteria; teachers are just as convinced that a certain Mrs. Brown is given added cafeteria and patrol duties simply because the principal does not like her. Or was favoritism responsible when a teacher new to the school with no training in guidance was made acting guidance counsellor, while other teachers possessed both training and years of experience?

Thus a major part of the efforts to secure a first-class citizenship must be directed to establishing equitable procedures, rules, and regulations which would reduce (if not eliminate) this *sub rosa* system of favoritism and discrimination current in school systems. Necessarily, non-discriminatory procedures would have to be based upon principles of seniority, rotation, and objective qualifications. These procedures are not designed to *replace* the administrative and supervisory echelon, but to provide a system of checks and balances whereby whimsical administrative decisions may be appealed.

Similarly, in disputed cases involving teachers and the board of education or between a teacher and her principal the decision on the merits of the dispute should not be imposed by either the board or the principal who are in fact parties to the dispute. Machinery to resolve disputes in a fair manner must shy from vesting all the decision making power in the hands of administrators or in boards of education. Final decision must rest with a neutral third party.

While the economic status of teachers has been too long neglected much discussion has revolved around the professional status of the teacher. And unfortunately this discussion has been too often of the myoptic sort.

The very word "professional" has been bandied about in educational parlance until its meaning has so changed that it now signifies the opposite of its sociological and dictionary definition. The word has become jaded. The teacher who voices some mild criticism at a faculty conference may find that she is regarded as "unprofessional"; a teacher who refuses to take on an extra cafeteria patrol also becomes "unprofessional." The term "professional" has degenerated into a concept signifying obeisance. Obey orders, remain silent, and don't dare to criticize or pursue an individualistic course—sadly this is what is expected of teaching "professionals." The model professional is the model employee on an assembly line in an educational factory. The teacher who does not conform to this bland, meek stereotype is a trouble maker, one to be watched, "unprofessional."

This is the opposite of what "professional" means and should continue to mean. Teachers must possess the self-direction, independence, and decision-making power that is part of the definition of "professional" and which distinguishes the professional from the employee on the assembly line. In other words, the teacher must be freed of a relationship which is based merely on dependence on authority. Where the teacher is competent he must prevail and not a higher authority. Let me illustrate this with the classic case of what happened to a Mount Kisco teacher who asserted his professional concern. This teacher was ordered to submit a planbook six months to a year in advance of the classes to be taught. He was a teacher regarded as one of the best in the Mount Kisco school system and was chairman of his department. In his considered opinion, planning so far in advance was nonsensical; it made a mockery of classroom planning. Surely no one would maintain that it is desirable or even possible to prepare detailed lesson plans so far in advance and for such a long period of time. Yet by refusing to go along with this order he was dismissed.

The question of planning, rating, and supervision must be freshly scrutinized from a true professional context. Supervision of teachers is not the same as supervision of department store employees yet too often this is just the kind of supervision that one encounters. Should a school administrator rate and supervise teachers merely because he is in a position of authority? Supervision and administration—the power to direct teachers—cannot be rooted in authority but must proceed from a superior competence.

In order to truly professionalize teaching, useless and demeaning chores must cease being performed by teachers. Teachers should be doing what they are capable of doing, namely, teaching. Yet the proliferation of these custodial tasks—patrols and clerical jobs—are given to teachers when they are properly the job of subprofessional school aides. School boards, however, have found it easier and cheaper to have teachers perform these chores rather than hire the proper personnel. Short-sighted economic sense reasons that it is more feasible to take away a lunch period from a teacher and let him eat while being a custodian in the cafeteria than it is to employ school aides; it saves that much more money.

These minutiae may not, on the face of it, appear to amount to a great deal. But when added to the cumulative list—which is growing by leaps and bounds—it deprofessionalizes teaching and in the long run makes teaching that much less attractive. It is here that a teacher's union is highly needed and highly professional: The mark of a profession is in limiting itself to that for which it has trained its people and a teacher's union seeks to cut down those tasks which are removed from the professional area of competence.

Finally there is the question of the "civil rights" of teachers. There are two million teachers in the United States who yearly inculcate the values and virtues of democracy while they experience less of what is meant by democracy in their respective schools than any substantial segment of our society.

There are basic civil rights which are not enjoyed by teachers in New York State or the United States at present. Teachers simply do not enjoy the right of free speech and assembly. A probationary teacher who may want to join the union rather than the association may not have his job the following year. This is not exaggeration. And how can teachers lay claim to first-class citizenship in the face of this situation?

For years only one organization—and that not a union—has had free access to teachers, to the letterboxes, and to school meeting places. Elections with "one party democracy" do not provide teachers with much choice or much democracy. The prelude to first-class citizenship is the right to free speech and assembly.

One of the major discussions at the present time is whether teachers should have separate procedures for collective negotiation or whether they should be part of procedures established for all other public employees. This question must be answered in the context of the fight for first-class citizenship for teachers. Teachers will not believe that any separate procedures established for them will be equal. That is, if separate mechanisms are set up for teachers to provide for representation and to provide for bargaining, teachers will be convinced that the reason for this separateness, the purpose of the separateness, is to preserve the inequality which exists at the present time. They will reject this. Teachers want equality and, because of this, will reject separation from other public employee groups.

What is desperately needed at the present time, when we are about to enter into elections to determine collective bargaining representation, is not, as has been suggested, a code of ethics. The function of a code of ethics is to prevent a group from abusing powers which it has. Teachers don't need a code of ethics at this time because they have little power to abuse. (Perhaps, in a few years, when teachers have acquired substantial power, experts will turn their attention to the development of such a code.)

What is needed at this time is a Bill of Rights for teachers. Legislation will soon be adopted giving teachers the right to be represented by organizations of their own choosing, but this legislation will mean very little unless there is a background and history of organizational freedom. Teachers must be given the right of free speech without jeopardy to their jobs. Teacher organizations must have equal rights within the schools to meet and to solicit membership. Without such an atmosphere of free speech and free association forthcoming representation elections will have the same significance as other elections which take place in one-party states.

The achievement of these civil rights for teachers is the appropriate prelude to the achievement of first-class citizenship in the economic and professional areas.

Concerns of the New York State School Boards Association

*Everett R. Dyer**

I WOULD like to make it clear at the outset that we believe the question of school board–teacher relations cannot be answered in isolation. As an employer–employee relationship, it is our first concern, to be sure, but a school board also bears a similar relationship to its nonprofessional staff. We cannot overlook the common elements which are present in school board–staff relations, whether the staff be professional or nonprofessional.

The school districts of this State employ tens of thousands of civil service employees. I choose to call them nonprofessional staff people because they are not certificated as teachers. Attention must be given to relationship problems that involve these people. Consideration of school board–teacher relations *only* will leave unsolved many of the problems that are met in the public sector by *all* public employers and employees. We would be concerned if this were to happen.

The solutions to relationship problems cannot and should not be sought without reference to other public bodies—our cities, counties, towns, and villages. These employers, and indeed the State of New York, have relationship problems that differ very little from such problems in the schools. Public employers, whether the State or local governmental units—and school boards, of course, are such public employers—have much in common with other public employers.

We cannot see how, by any broad stretch of the imagination, one part of a total problem can be solved independently of the other parts. No one would take the position that a part is equal to the whole or even greater than the whole. This would be contradicting a fundamental axiom with which we are all familiar. We could not and would not accept conclusions for the whole of society based only on one part of that society.

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* Executive Secretary, New York State School Boards Association.

We should like to point out further that the legislature seemed most concerned with those measures designed to cover the broad front of employer–employee relations in the entire public sector. Although a bill was introduced to deal with teachers alone, the legislature gave its greatest attention this year to measures which related to all public employees.

The same thing can be said for the Governor's Committee on Labor Relations. Its recommendations were broad and basic and did not involve attention to special groups. Due to the limited time available for study, its report was necessarily incomplete; however, it does provide the framework for continued study.

One of our first concerns, therefore, is that this two-day conference, valuable as it is, may be too narrowly restrictive in the sense that it will deal with but one facet of the entire problem of labor relations in the public domain.[1]

Another concern of school board members which I shall put before you relates to the role of public employers and their responsibilities to the people they represent. School boards, together with governing boards in cities, counties, towns, and villages, have serious responsibilities to the people. These responsibilities cannot be measured in the same terms that are used in the private sector of our economy. The specific role of the public employer must be carefully defined in conformity with the basic philosophy of our representative form of government.

The school board is the agency through which the will and aspirations of the people are translated into an educational program for the children of the community which the board serves.

"*We, the people*" might well be the opening words of any determination made by the governing board of any political subdivision of the State. Such a board is made up of representatives of the people and is acting, therefore, in its official capacity "for the people." The *people* put these governing boards into office; the *people* can remove them from office; and the *people* charge them with looking after the common interest. Everyone knows this is the way our representative form of government works. The persons charged with governing school districts and other local governmental units as well are, literally, "*of the people, by the people* and *for the people*."[2]

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[1] Other concerns on which no elaboration was made:

1. Pupil welfare—continuance of the business of public education.
2. Differences between & among school districts—ability, customs, moves, etc.
3. The role of administrative & supervisory personnel.

We cannot do anything here today or tomorrow that is effective or sound without keeping this philosophy firmly in mind. This is such a major concern that I can say flatly to do otherwise would be a disservice to the people of this State. This basic concept was further emphasized when the Governor's Committee, in its report, called attention to the fundamental difference between public and private employment—it clearly indicated that the pattern for one does not necessarily fit the other.

A third concern of school boards is the danger of moving too rapidly in seeking solutions to problems in a relatively new area—that of employer–employee relationships in the public sector. Ill or hastily considered action will do violence to accepted principles of government. It will cause friction where harmony should exist and will damage, perhaps irrevocably, the processes and outcomes of our schools. No one at this conference would want to see such a result but we are concerned that it might happen if care is not taken.

Admittedly, there are calls for quick solutions of problems which exist in certain areas of the State. Relationship problems however, are of such fundamental importance and issues in connection with them are so sufficiently new that proper solutions can be found only when they are based on sound philosophy and considered judgment.

The Governor's Committee recommended caution in dealing with labor relations problems. Certainly this recommendation fits all parties concerned—the Legislature, local governing boards, and employee organizations. Who can say that the Legislature, so recently adjourned, did not heed the Committee's words of caution when it declined to act on any of the labor relations measures which were before it? A much greater knowledge and understanding of all facets connected with this relatively new area of relationships in the public sector is needed than presently exists.

Another concern of school boards relates to mandates. For several years emphasis has been placed on the need for labor legislation. Yet no case has been made that enactment of such laws will alleviate alleged problems.

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[2] NYSCCPS would applaud the concern I express on behalf of the people (citizens generally).

We believe emphatically that people of good will—school boards and their total staffs—can, through the educational process, develop much stronger programs and procedures than can be forced by legislative fiat.

The Condon–Wadlin Law is an excellent example. It was enacted in a cloud of angry expediency. For nearly 20 years it has failed to do the job it was intended to do. During that same period many school boards and their staffs have been working quietly and conscientiously to solve their own problems and they have been doing so to their mutual satisfaction. We believe this is a reasonable way for reasonable people to govern themselves.

We believe, too, that school personnel, responsible for the education of children, should be equally willing to educate our adults. Admittedly the educational process produces results more slowly than statutory mandates, but in the long run it is far more effective.

Our concern is made clearly evident by our actions. Recognizing the need to study fundamental principles in depth, our Association has been working closely for over a year with the staff of the School of Industrial and Labor Relations here at Cornell University. Some of the studies we have had made have been published and others are underway. Much more research is necessary in this area and the suggestion of the Governor's Committee for further study is highly pertinent. We welcome it. We are pleased too that the Commissioner has also recognized this need by initiating this conference and by proposing additional conferences on a regional basis. We have lived alone with our concerns long enough and we are happy to have such illustrious company join us.

The last concern I shall mention is a general one although it is directly applicable to the questions under discussion at this conference.

We believe that the strength of all our governments—federal, state, and local—is undermined when, to satisfy some, we establish machinery which will circumvent the democratic principles for which we have fought for nearly 200 years. The will of the majority is paramount, and minorities need to know that. Just as important, however, the majority must be concerned with the desires and needs of the minority, and minorities need to know that too. We are concerned when such self-evident and basic truths are lightly passed over.

It is the majority which elects representatives to act on behalf of all citizens. These elected officials (governing boards) cannot and should not relinquish either their authority or their responsibility. Governing boards that develop or accept procedures which *require* acquiescence to proposals of their staffs will find their effectiveness severely hampered.

It is by such processes and procedures that local control is seriously weakened and there is good reason to believe that many able civic-minded persons would be unwilling or unable to give the time necessary to serve as elected officials. Many of our people have expressed such a concern. This might be particularly true of school board members and I offer the opinion that here is a place where we want the very best of our public-minded citizens to serve.

These, then, are some of the concerns of our school boards. They also reflect the concerns of the public. We respectfully suggest that our professional friends at all levels—teachers, supervisors, and administrators—should have equal concerns. They too, perhaps even more than our lay people, because of their work with young minds cannot and must not ignore their responsibilities to the public. As organization representatives here today, we all have the obligation to help our members understand and meet their responsibilities. And perhaps this should be our most important goal at this conference.

Teachers, School Boards, and the Employment Relationships

E. Wight Bakke[*]

I HAVE long since learned that it is poor strategy for a speaker to start with an apology or with a confession that he is not fully competent to deal with the subject. Early in life my grandfather gave me some good advice which I have found is useful to follow. Said grandfather, "Never apologize or explain in front of an audience. Your friends don't need it, and your enemies won't believe you anyway."

After reading some of the editorials and letters to the editor, as well as my own mail, following the issuance of our report to the Governor on Public Employment Relations, I am not sure whether tonight I am among friends or enemies.

Nevertheless, I have a confession to make. When the Governor asked me to serve on that committee, I believed, that after 40 years of study and experience in the field of management–employee relations I was somewhat familiar with the issues and problems whoever the management and whoever the employees. I must confess, however, that the deeper I got into the work of the committee, the clearer it became to me that as far as employment relations in the public service are concerned I was in frontier territory for which the maps of the terrain I had drawn over the years were not adequate. They were particularly inadequate when the sector of that frontier to be explored was that labeled "Employment Relations in the Public School System."

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[*] Professor of Economics and Director of Labor and Management Center, Yale University.

I think it is appropriate to make that confession at the beginning in order that you know I am sincere when I say that I'm glad to be here tonight to discuss the nature of this challenging frontier in the conquest of which we are mutually involved. But I'll have to do it as a fellow explorer, not as a guide like Buffalo Bill or the president of the NEA or of the AFT or of the National Association of School Boards.

There are so many aspects of that frontier we could explore together here in the genial after-dinner atmosphere of good drinks, good food, and good fellowship without getting ourselves involved in controversy. But time is limited. The big question in the minds of all of us is whether we are going to have to plan our future, first, on the assumption that classroom teachers will have an increasing voice in setting up and administering the terms of their employment with school administrators and boards of education; and second, on the assumption that that voice will be a collective voice organized and given power by associations or unions they choose to have represent them. Although the subject is controversial, I'm inclined to plunge right in. Is it inevitable and is it appropriate that teachers participate through collective representatives in joint determination and administration with superintendents and school boards of the terms of their employment relationship?

You will note that I did not use the phrase "collective bargaining." That was intentional. I consider collective bargaining to be one of the most viable and just features of our industrial democratic society. But to use that phrase at the start would assume a conclusion as to the particular kind of arrangement which would be best adapted to achieving our objective before we have explored the nature of our problem or come to a mutually satisfactory consensus as to what the objective is.

I am aware, of course, that in declining, at least initially, to use the words "collective bargaining" and in announcing a focus on "participation in joint determination and administration of terms of employment through collective representation," I have already revealed what will appear to some of you as a bias. I shall have to live with that result. And I am sure that in spite of my best efforts to approach the subject dispassionately and objectively, the impression I create will be described by many of you as similar to the title of a book I once read. The title of the book was, *An Unbiased History of the Civil War—From the Southern Point of View.*

But now to the subject. There's no point in holding you in suspense. I think the answer to both questions, "Is the development inevitable and is it appropriate?" is "Yes." There may be some question as to appropriate alternative ways and means. There are a host of questions about the scope of the issues to be negotiated. Also the question of what kinds of representative organization is still open. The answers to those questions are going to be hammered out and choices made to meet the particular circumstances, to satisfy the kinds of people who make the decisions in particular localities, and to accord with the relative skill and power they have to make their decision stick. But the main drift? That's more certain.

Let me say at once, then, that as I read the signs, the future does not hold the possibility of maintaining unmodified and in its entirety the position of a past president of the National Association of School Boards when she stated in 1964, "My position, and that of the National School Boards Association, is one of vigorous opposition to bargaining agreements between school boards and teacher organizations. We oppose both collective bargaining as advocated by the American Federation of Teachers and professional negotiations as advocated by the National Education Association.... We recognize many areas of mutual concern, but not of joint responsibility with teachers organizations. We believe that if we are to retain our unique system of citizen-controlled public education the board must protect its right to determine policy. We see any action which diminishes the decision-making power of the board as weakening local *lay* responsibility for education because it removes control over policy that much further from the public's hands."

Then after quoting with approbation Paul Woodring's words, "Just as war is too important to be left to the generals, education is too important to be left to the educators," she elaborates her reasons for the position taken. "Instead, these early Americans delegated this responsibility to boards of education, who for the most part are elected by all of the people in the school district, are directly responsible to them, and can be replaced or removed from office by them.... The school board which shares or gives up its statutory decision-making authority limits or gives up its ability to respond to the wishes of the citizens of the school district."

In all fairness to Mrs. Radke it should be added that she goes on to state, "The policies of the N.S.B.A. recognize the great contribution to overall planning which can come from the knowledge and experience of classroom teachers. Our membership is keenly aware that, if programs of educational excellence are to be developed, teachers must be consulted and the results of that consultation given due weight in the decision-making process."

That position can't be shaken on one score. The parents and others in the community have laid upon the shoulders of elected or appointed school boards and school administrators the responsibility for setting up and operating a system for educating their children. They've also given them the authority to do that with, practically speaking, only one string attached, namely that the price be right, that the cost be no higher than that for which they are willing to tax themselves.

Now if the members of the school boards and the school superintendents could do that by themselves this would be the end of it. But they can't. They have to hire teachers to get the job done; not just to do the teaching but to suggest how it shall be done with professional excellence, and to suggest the kinds of tools and facilities most likely to lead to that result. School boards have to become employers, and in order to get and retain employees they have to come to a mutual understanding with those employees about the terms by which that employment relationship will be governed. The teachers have to meet their expectancies and they have to meet the expectancies of the teachers; otherwise there is no deal.

Now when the school board employer gets involved in that process, he is operating within a set of community-wide values and premises that concern the fact of *employment as such*. That employment can be in schools, or in hospitals, or in government bureaus, in mines, in factories, or in any other place where some men are hired to work for other men. In every place, to be sure, that employment has its own peculiar characteristics. But it is still *employment* and subject to principles and constraints that pertain to employment. To plan, develop, and maintain a system of public school education is one responsibility and it is subject to a set of public expectancies pertaining to what kind of an education people want their children to have and what they are willing to pay. To hire and employ teachers is a related but not identical responsibility, and it is subject to a set of public expectancies pertaining to what standards should govern the employment relationship. Those latter expectancies rest in the minds not only of those who are interested in the output and service of people employed to educate but in the output and service of people employed to provide every other thing the people want and are willing to pay for.

My basic reason for believing that teachers will increasingly participate by means of organized collective representation in joint setting up and administering the terms of their employment relationship is that such a development is in line with, and supported by, the evolving expectancies of the public about what is right and proper with respect to relations between employers as such and employees as such.

Now that distinction between the responsibility for providing for what Mrs. Radke calls "the overall planning for developing programs of educational excellence" as the main job, and defining and administering employment relationships as one aspect of getting that main job done, is a distinction that it's hard for those immediately involved, both employers and employees, to understand.

Let me tell you an experience I had when the question was whether Yale professors would be included in the system of Old-Age and Survivors Insurance. That is certainly an aspect of the employment relationship. You'll recall that at the start certain exclusions were made for nonprofit institutions devoted to religion, education, charity, and the prevention of cruelty to animals and children. Yale fell into that exclusive and excluded group. A major reason was that the overall job of those institutions was considered to be so different and their organization and functions and financing so different from those of other institutions that this arrangement about the terms of employment was irrelevant. The administrators of those institutions made that very clear to the members of Congress.

The possibility was finally offered for voluntarily joining the system. Prior to the debate in the faculty over whether we should do so, the president asked me to be ready to answer questions about the economic soundness of the plan. I didn't have to answer a single question. The members of the faculty weren't interested in economics. What troubled them was being considered employees. As one of them summed it up, "I'm against our going into this scheme. When we do we shall be considered employees of the university. This public pension scheme is a part of the social system that has to do with the rules and rewards and conditions of the employment relationship. This has nothing to do with a great university whose function is to increase the stock of the world's knowledge and to teach and train young minds. We are not employees. As the priest is not the employee of the church, he *is* the church; as the judge is not the employee of the court, he *is* the court; so we are not the employees of the university, we *are* the university."

True enough—but that doesn't change the fact that we are hired and paid and subject to all kinds of conditions of employment. Increasingly the universities (and similar institutions as well) are realizing that as far as employment relationships are concerned we are stimulated and constrained by some principles common to all employing institutions concerning that particular area of social concern. Those common principles include participation by employees in determining and administering as a collectivity of employees the terms of their employment. We don't belong to the AFL–CIO, but we do participate and in an organized fashion.

Whatever may be the ultimate arrangements by which that "due weight is given to *consultation* with teachers in the development of overall educational programs and educational policy," the point on which we are now focused is how the terms of employment of teachers shall be determined. Granted, the school boards have been given the job of providing an education for our children and they cannot do it by their own efforts. For doing that job they must recruit and hire teachers. It is that employment relationship we are talking about, and the appropriateness of the teachers having a collective voice and participation in determining what its terms shall be and how they shall be administered.

Any arrangements we make for defining and administering the terms of employment of teachers and the degree and kind of participation they have in that process will, unless we as educators want to secede from the nation, be under pressure to be consistent with public expectancies and the value premises that are evolving specifically with respect to the employment relationship.

I am sure you are all familiar with the general trend of these evolving expectancies, but it may be of some value to refresh our memories about their specific content.

The first set of expectancies underscores our traditional national faith that the individual has the right to contract freely for the giving and for the payment of his services, and the conditions under which those services will be rendered. Here they are:

1. The individual has a right to *participate* in determining the conditions of, and the rewards from, the employment relationship to which he and his employer agree to commit themselves.
2. That agreement should be *voluntary*. It should be a contract arrived at by mutual consent defining mutually acknowledged reciprocal rights and duties.
3. Those rights and duties should be dependable and stable. They should not be modified during the period of the employment except by mutual consent. Moreover any alleged violation of the agreement should be subject to correction through due process of law both within the employing organization and the community.
4. Either party should have the right to raise questions of interpretation or to bring charges of violation against the other party without fear of retaliation for that action.

5. The individual should have an unlimited right to free association with his fellows if he so desires for any legal purpose including the purpose of maintaining and improving the terms and observance of his contract service, without fear of discrimination for doing that.

You can sum up those principles of individual rights in the employment relationship by saying that they focus the principles of *freedom of contract* on the kind of participation the individual is expected, and that he can expect, to have in setting and administering the terms of his employment.

But freedom of contract doesn't just happen. There are certain well-recognized requirements that have to be fulfilled if freedom of contract is to be a reality. Here they are:

1. The individual must be free *not* to contract without losing his bargaining power.
2. The terms of employment must be clearly defined and stated so that both parties know for sure what they are and attach the same meaning to them.
3. Regular procedures and procedural agencies must exist for establishing, interpreting, and administering those terms and for resolving any disputes which arise in any of these processes.
4. Both parties must have power to influence these processes.
5. Both parties must be committed to acting in accordance with the results achieved.

Nothing I have stated to this point involves the absolute necessity for *collective* action on the part of employees. But under certain circumstances it has proved desirable to the employees (and increasingly to employers) that the individual join with his fellows to be collectively represented. I'll come to those circumstances in a moment.

Those principles of, and requirements for, freedom of contract have been evolving in our society ever since the decline of the feudal system and they are one of the most important foundations of a free society. Having taken place in the shift from a feudal to a business system, they are adaptations to the change in what an individual could hope for by working. They are principles relevant to the achievement of personal status when instead of a man having the right to a working status because he was born to it, he had a right to whatever working status he could negotiate for and earn.

There is another set of principles of employment of more recent origin. The principles to which I'm calling your attention now grow out of the fact that people who manage and people who are managed put a different set of interests *first* when they are negotiating the terms of their relationship. Those principles have to do with balancing organizational and managerial interests with personal, human, occupational, and professional interests as a foundation for decisions governing the employment relationship.

An employment relationship, from an employer's point of view, imposes certain organizational and managerial responsibilities which are necessarily a part of his function. To meet those responsibilities, he *has* to pay primary attention to the following operating principles:

1. First is the principle of *efficiency*. The employment relationship is one with a productive purpose which he is held responsible for achieving. The terms of employment and their administration must be consistent with the *efficiency* of employer and employee performance.
2. Second is the principle of *authority*. The employment relationship is one in which the employer or his agents direct the work of employees. The terms of employment and their administration must be consistent with the principle of the maintenance of the *employer's* acknowledged authority to direct.
3. Third is the principle of *minimal cost* and *opportunity cost*. The relationship is one to establish and maintain which costs money, not only because of wages that must be paid but because resources and equipment of various kinds must be provided. Moreover, if money is spent for one thing, it cannot be spent for something else. The cost must be borne within budget and taxing power restraints and by reference to what managers want to do most with the resources available. The employment terms and their administration must be consistent with the principle of *minimal cost* and *opportunity cost.*
4. Fourth is the principle of *discriminating supervisory evaluation.* The employment relationship is one in which discriminating evaluations must be made of employees by supervisors. To these supervisors a considerable range of discretion must be permitted in order that they may build an effectively functioning team out of the varied individuals who fall under their supervision. The terms of employment and their administration must be consistent with the principle of leeway for *discriminating evaluation* of employees, workable in the light of the kind of characteristics and predispositions both employees and supervisors have, and in the light of the objectives of the organization as a whole.

The operation of an organization, be it school or factory, in accordance with these managerial principles is not the result just of employer character or personality, certainly not an expression of an autocratic or authoritarian personality. They are the result of a necessary condition for getting cooperation in the production of goods or services with limited resources that have to be allocated among many alternative uses for those resources.

Now since the whole reason for an employing organization (in this case a school) is to *produce* (educational) service, these principles are the concern of managers prior to any principles of operation concerned with satisfying the human interests or declared professional interests of the people they employ.

When an employer in order to get his overall job done sets up an organization, hires people to fill the slots in that organization, and negotiates terms of employment with them, he gives top priority to these managerial principles or criteria. If arrangements are consistent with them those arrangements are satisfactory; if not, they are unsatisfactory. That has to be the case. Schools are established first of all to do the job of educating children with the resources the community is willing to devote to that main objective. That requires overall organization and management, and the first principles of organization and management have to be observed. I doubt if that overall job can be done in the long run, or even in the short run, if teachers are frustrated in their needs for personal, human, and professional satisfaction. But let's face it, schools are established for education and boards and administrators are charged first and foremost with the job of using the resources the community is willing to supply to build schools and give children an education. To produce light hearts, smiling faces, and satisfied egos in teachers comes second, though it is a strong second.

Moreover, there is a natural and understandable tendency for school management to allow these managerial principles to continue to dominate the setting and administration of the terms of the employment relationship *unless* the employee has the freedom, ability, and power to insist on the recognition of his personal human objectives as legitimate, and, from his point of view, of equal weight, in the setting and administration of those terms.

In broadening areas of employment relationship in the United States it is being acknowledged that it is legitimate and desirable to constrain the *unrestricted* implementation of these operating managerial principles by giving an effective participation to employees in setting and administering the terms of employment.

In other words, there is a growing recognition that employees should have a voice which enables them to accomplish the following results:

1. To temper the employment terms advantageous to productive *efficiency* with terms advantageous to achieving *human satisfaction,*

progress, security, and justice and to maintaining physical and mental health among employees.

2. To couple employment terms advantageous for maintaining *directive authority* moving *downward* in the hierarchy with terms advantageous for maintaining *representative authority* moving *upward* in the hierarchy.
3. To mitigate the effects of *budget and tax restrictions on* the setting of wages, by giving equal weight to standards of compensation which are rational in relation to the worth of the service rendered and in relation to the price paid for similar work in other occupations, and to mitigate the effects of the same financial restrictions on how money is allocated to different purposes by insisting on giving priority to the relative educational values of those expenditures. Last year a school board in Connecticut cut $5,000 for pupils workbooks out of the budget and kept $10,000 for draperies for the walls of the gymnasium.
4. To mitigate the supervisory, discriminatory evaluation of teachers by establishing of standards which are non-discriminatory with respect to social, racial, national, sexual, political, or source-of-influence characteristics of particular individuals.

I've been close enough to school board operations to know the range of factors that have to be taken into account in deciding things that are of tremendous concern to teachers but are only a part of the problems a school board has to wrestle with. Fitting all of those factors and problems into an overall solution has to be their number one concern. They don't, they can't get as worked up as the teachers about their number-one personal and professional problems. Unless teachers take the initiative and force attention to those problems, they are inclined to assume everything is all right.

All of you know the kinds of things I'm talking about: 1. The balance of seniority and ability in matters of tenure, transfer, assignment, layoff; 2. The focus of any salary increases at the top or at the bottom of the scale, overall or applied to special groups, flat rate or percentage; 3. The extent of freedom to discipline troublemakers among pupils and what kinds of punishment are to be permitted; 4. Recognition of the amount of time spent on papers, reports, and lesson planning outside school hours; 5. Rotation of teaching and of non–teaching assignments; 6. Lunch period obligations and other extra non–professional assignments; 7. Size of classes; 8. Supply of adequate teaching aids; 9. Impact of school room and assignment arrangements on physical and mental and emotional health; 10. Grievances stemming from discrimination on the basis of internal school "politics" and various types of favoritism; 11. Pay and security benefits.

Unless teachers have an equal and determining voice in things like that, the unilateral decisions of the school board, even with the most paternalistic consultation, are not going to produce the kind of staff morale and enthusiasm and cooperative spirit that is a condition for good teaching. And good teaching is the ultimate test of whether we school board members have really met our public responsibilities.

I think that those of you who are familiar with the employment relationship in the public school system will recognize that the remarks just made apply as much in the public schools as in any other place where some people work for other people. At least as to these aspects of the employment relationship, schools aren't in a world by themselves. And the trend of the times in the rest of the world is to extend the scope and to strengthen decisive importance of the employee's voice in these matters, his participation, his *joint* participation in determining and administering the terms of employment.

Organized Collective Representation

But I was predicting that the arrangements consistent with these evolving principles of the employment relationship would involve an increasing participation of teachers *by means of organized collective representation, in formal negotiations.* What basis is there for that prognostication?

The basis is that there are sufficient organizational similarities between the employment relationship in schools and in those other institutions where organized collective representation *has* developed to suggest that such arrangements would appear probable in schools also. *Organized collective representation* in setting and administering the terms of employment doesn't happen in all cases. But it does have a tendency to appear under the following circumstances:

1. *Where there is a necessity for common standard terms applicable to all members of a sizable group.* When a group of individual employees work under, and must be provided with, approximately the same pay, benefits, hours, and conditions of work, it is impossible for the individual employee, or employer for that matter, to make any substantial modification for individuals which departs from the common rule. This is not the result of a demand for equality or of bureaucratic rigidity, but of operating necessity. The implication is that standards and rules applicable to the whole group should be negotiated group-wise rather than individual-wise.
2. *Where there is a relative absence of individual bargaining power.* Where individuals have a unique or outstanding skill or individual worth to the employer so that it is difficult for the employer to replace that specific individual, that individual normally will rely on

his own personal bargaining power. Where the group of employees have, or have the opportunity to demonstrate, few unique qualities which vary greatly from person to person, where within reasonable limits one is replaceable by the others, this individual bargaining power does not exist to the same degree. The implication is that a lack of individual bargaining power can be compensated for by group bargaining power maintaining a solid and united front.

3. *Where there is an impersonality of relations between employer and employee.* When the organization for which the individuals work is large enough so that there are several strata of supervision between the employee and the ultimate decision-making employer, the problem is to find and get to the employer. The implication is that many persons cannot do this individually, but they can do it by collectively focusing their search and dealings in an organizational representative.

4. *Where the "employer" is an organized group.* When the "employer" is not an individual but in reality another *group* of employees (or agents) called management *who are organized,* the implication is that an organized group is needed to deal with an organized group. In the case of a school system the school superintendent and the school board in reality constitute an organized group of employees of the public.

5. *Where the group concerns and grievances can be interpreted as personal gripes and complaints.* When the effort is made to present effectively the kinds of personal human and even professional interests we discussed as having equal legitimacy and force to organizational and managerial interests, some person has to speak up. Lacking the support of the united front of an organized group, that person is likely to be, and is more often than not, labeled a troublemaker, a center of agitated discontent and disloyalty, and other terms scarcely designed to increase that person's job security. The implication is that organized group support for a group spokesman is essential to provide that spokesman with a regularized role which does not damage his personal security.

6. *Where there is dependence for performance results on management.* When the product of the individuals in the group is similarly dependent on the policies, decisions, resource supplies, etc. stemming from management, the implication is that such common dependency can best be dealt with through collective representation designed to make such managerial action advantageous to good performance results by members of the group.

7. *When there is a community of interest among the employees.* As you are all aware, there is a basis for such interest in the case of teachers. Identification with common skills, standards of performance, similarity in type and extent of preparation and training, similarity in status in the eyes of the community, and dependence of individual status on the status of the group as a whole

are all elements. When there is such a community of interest, the other bases for collective organized representation are reinforced.

There is another all pervading and peculiarly American factor in the employment situation that is so obvious that it ought not to be necessary to point it out. That factor is the fundamental premise of the American creed that the individual is responsible for his own destiny and, therefore, should have a controlling part in dealing with the circumstances and conditions that make for his success or failure along the road to that destiny. From the beginning of our history, we have driven that tenet of our creed into the minds and hearts, almost you might say, into the very flesh and blood and bones of everyone born here or who has come to live here. It has been a part of the message of every political, social, familial, and educational institution, particularly our schools, and on the whole it has been supported as the wisdom of experience. You can't do that for 350 years and then be surprised when persons insist on demanding a right, and not just a privilege, to participate individually and collectively in setting and administering the terms of their employment which, after all, is the most basically important area of their life effort. Particularly, we should not be surprised when teachers, to whom we have delegated as one of their responsibilities conveying the essential principles of democracy to our children, defend this desire and demand this particular principle of democracy which they tend to teach to others.

There are other stimuli to participation through organized collective representation, but these are the chief ones in which there are similarities between public school and other kinds of employment relationships. Anyone who would challenge the probability that collective and organized participation of teachers in setting and administering the terms of their employment will increase would, I assume, have to deny that there were such similarities. Alternatively, he would have to demonstrate that there are special factors in the public school situation which could counter the impact of these circumstances named above. I am aware of such special factors which will influence the nature of, and specific arrangements for, that collective organized participation, but none which would eliminate the probability of its increasingly widespread presence in our public school systems.

Some of you may think I have been too positive in urging that we plan our future course in this matter of teacher participation on the assumption that we cannot choose between collective, organized, determinative, joint decision–making about teachers' employment terms on the one hand and, on the other, such milder forms of teacher participa-

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tion, as individual, informal, consultative, but ultimately unilateral decision–making. The choices in my judgment lie among the kinds of collectivities, the kinds of organizations, the kinds of negotiable issues, the kinds of strategies and tactics to be followed by each party and by both parties in *joint decision–making.*

I do not look with confidence and faith at the future of our country and the welfare of our people if we are going to repeat in the field of education the period of civil war we experienced on this issue in industry. The root cause of that war was the assumption and the confident, but mistaken, prediction that the alternatives were not between the kinds of organized collective representation in joint decision–making but between organized collective representation in joint decision–making, and informal, individual, consultation in ultimately unilateral decision–making.

Now I am aware that what I have said will be challenged as having presented an unbiased story about the fundamental basis for collective joint decision–making — from the teachers' point of view. With that challenge I would not agree, for there are great obligations and also real dangers that go with the right to joint decision–making. And unless those responsibilities are observed wisely and honorably, the rights can turn to ashes. Moreover, the practical decisions and arrangements to be made hold as many possibilities of danger to the teachers' career objectives as to school board members' objectives. Decisions on the appropriate unit; on the kind of organization chosen; on the scope of issues; on the relation between negotiated and mandated items; on the strategies and tactics used; on the choice between using economic, political, social, or professional power; on the arrangements between school and political units and the relations of teachers' organizations to both; on the question of whose interests come first the individual's, the group's, the children's, the employee organization's, the community's; all these decisions are full of bear traps for teachers, for employee organizations, and school boards, individually and collectively.

And before closing I'd like to underscore that there is an overall public interest and a public right related to the fact that the public does supply the resources for doing the job of education. The public voice legitimately has to be heard along with our professional and personal voices—even when it comes to setting the terms of our employment.

Let me share with you a personal experience that all my life has driven that obligation I owe the community as a teacher home to me. In the middle of the 19th century my forebears as young married people came to live and work on the prairie of the Midwest. There was nothing tion, as individual, informal, consultative, but ultimately unilateral decision-making. The choices in my judgment lie among the kinds of collectivities, the kinds of organizations, the kinds of negotiable issues, the kinds of strategies and tactics to be followed by each party and by both parties in *joint decision-making.*

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Let me share with you a personal experience that all my life has driven that obligation I owe the community as a teacher home to me. In the middle of the 19th century my forebears as young married people came to live and work on the prairie of the Midwest. There was nothing but the good earth and sunshine and rain to work with when they came. Without adequate equipment and stock and with primarily their own physical strength and willpower they set to work to build their homes and provide for their families from the resources nature provided. For years this effort was so lacking in reward that they could barely provide themselves with the necessities for physical survival. From sun–up to sun–down they worked the soil and slowly raised their standard of physical life. Came the time when, at last, they felt that they could afford something more. Their first thought was to secure a pastor so that they would not be completely dependent upon the sporadic visits of itinerant ministers. They invited a young man to come and live with them, but his ministerial duties were a small part of his weekly task. He was given a plot of land and had to share in the productive work of the community, although for one or two days a week he was relieved of such duties in order to perform his pastoral functions. In another few years it was possible to relieve him still further from his economic tasks and provide him with sufficient "leisure" from them so that he not only could preach but also could teach their children. As the people accumulated larger surpluses and more children, a full–time minister and a full–time teacher were brought into the community and they devoted all their time to their respective tasks.

This simple story of life on the frontier seems to me to indicate the basic dependence of the teacher upon the work and products of the other members of the community. It suggests that the teachers' work is possible only to the extent that the community has a surplus of resources which makes it possible to excuse them from the basic production of food, clothes, and housing, so that the community itself might benefit by the labors of teachers in their own field. The community is willing to do this because it values the results of these labors more than the goods with which the teachers are supported.

The size and scope of the public school system functions have gone far beyond those of the teacher in the immigrant community. The essential relationships have not changed. The obligation of the teacher to the community is imperfectly recognized unless we realize that members of the community might have made an alternative disposition of those resources devoted to supporting us as teachers.

We are on a frontier here in this matter of how far and in what way and through what organizations teachers, administrators, school boards, and political officials will participate in determining and administering the terms of the employment relations. Much of the terrain is uncharted for this particular purpose. We can take and stand on *positions* or we can analyze the elements in the problem and try to make our solutions consistent with the nature of the problem. If we want our children to have the best possible education, we'll do the latter.

Moreover, there is no sense in any one group hoping to have its own way designed to satisfy what it believes its present interest to be. *Our* rights as teachers to personal and professional representation and control over our own affairs and the legitimate interests of unions and associations to extend their membership, influence, and power have got to be integrated with the right of the whole people, through their elected or appointed boards of education, to have a powerful voice in choosing the kind of education they want and in deciding what they are willing to pay for it, and what that comes to in terms of employment. Otherwise any arrangements we make may temporarily seem most satisfactory for any one group, teachers, employee organizations, or school boards, but they won't be most satisfactory and workable in a situation where *all* of us are involved.

We may end up like the March Hare who tried to fix the Mad Hatter's watch with *butter*. When his failure became obvious all he could say was, "And it was the best butter, too. The best butter."

Appropriate Legislation Covering the Employment Relationship in Public Schools

Introduction

Walter Oberer[*]

I INTEND in my introductory remarks to honor two principles. The first is that of brevity. I have always believed that the real spark of a meeting of this sort lies in the give-and-take of discussion that follows the initial presentations. Accordingly, I shall hold my comments to a minimum. The second principle I shall strive to honor is that of impartiality. I have on several occasions served as an arbitrator in school teacher disputes and, like any other selfless arbitrator, I know what side my bread is buttered on. The fact that my bread this morning is buttered on three sides may provide mild amusement for you and embarrassment for me as these proceedings progress.

Our subject is legislation concerning the right of public school teachers to "bargain collectively" or, if you choose, "negotiate professionally" (you see how impartial I am being) with the school boards which employ them. The organizational scheme of this morning's session is as follows: Professor Doherty and I put together a list of the questions of law and policy which are involved in such legislation. We next selected three of the most knowledgeable lawyers presently in harness to act as spokesmen for three of the most important points of view with respect to such legislation—on the one side, the view of the local school board, and on the other, bifurcated side, the views of the two competing teacher organizations: in alphabetical order, the AFT and the NEA.

We wanted lawyers to serve as our spokesmen because the questions we chose to have them speak to are heavily freighted with what we friends of the law call "legal implications"—what some others on occasion call "mumbo jumbo." (There was a piece of mumbo jumbo haunting these premises in yesterday afternoon's session. But nobody called it by its right name—"sovereignty." We may have occasion to get into the question of sovereignty in our discussion this morning.)

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[*] Professor, School of Law, Cornell University.

I suspect that our success in capturing the services of our panelists—these three outstanding draymen—is largely attributable to the fact that they were *already* in harness— the harness of the clients they represent in public school teacher employment relations. I hesitate to go so far as to suggest that they may be billing their clients for their time this morning. In any event, we are very happy to have them with us. My further suspicion, even hope, is that our panelists will not pull as a team. My one bias, as chairman of this session, is in favor of excitement.

Professor Doherty and I next confronted these knowledgeable spokesmen with the list of questions concerning legislation for teacher negotiations which we had previously prepared, asking them to pick out those questions which most interested them and to prepare to speak to those questions in no more than 15 minutes apiece at this panel session. We did not, of course, know what questions each would choose—whether, indeed, they would choose the same or different questions. In either event, what they had to say would provide, we hoped, a yeasty ferment out of which discussion might fairly bubble.

My final function in these preliminaries is to place before you the list of questions presented to our panelists.

[The following document was placed in the hands of each person present at the panel session:

List of Questions Concerning Legislation to Govern the Employment Relationship in Public Education

I. Are there any compelling reasons to have a statute at all? If we agree that there should be a statute, should teachers be covered along with other public employees or be singled out for separate treatment? In which states has legislation been passed and what has been the consequence in terms of formalizing the employment relationship in those states?

II. Representation

A. Determination of units

1. Should supervisory personnel be included?

2. Should satellite personnel be included?

3. Should there be an option on the part of teachers, supervisors, satellite personnel as to whether or not they want an all-inclusive unit or separate units?

B. Should representation be determined by an election or by a card count or examination of membership lists?

C. Who should determine the bargaining unit and conduct the representation election?

D. Should there be exclusive or proportional representation?

    E. What is the essential purpose of representation, for discussion or bilateral determination of conditions of employment?
    F. Should a statute impose an election or contract "bar" so that the school board will not have to get involved in election procedures more often than every other year?

III. Unfair labor practices
    A. Should it be an "unfair labor practice" for a school board or administrator to discriminate against employees on the basis of membership or non-membership in an employee organization, or otherwise to interfere with or take part in organizational activities?
    B. Should there be a duty-to-bargain clause in the statute?

IV. Should there be a prohibition of the "union shop" or any form of compulsory membership? What of the "checkoff" of dues?

V. Negotiations
    A. Should the statute indicate the scope or subject matter of negotiations? If so, what should the scope be?
    B. Should the statute provide for a written, signed agreement?
    C. Should the statute set the duration of an agreement?
    D. Who should negotiate for the school board?

VI. Strikes and quasi-strike methods
    A. Should the strike be declared illegal? (What of NEA "sanctions," mass "resignations," partial withholding of services?)
    B. If so, what penalties should be imposed?
        1. Against individuals?
        2. Against employee organizations?
    C. What impasse-breaking procedures should be developed?

VII. Administering agency
    A. Should the labor relations board administer the law?
    B. Should the law be administered by the education department?
    C. Should a new agency, independent of both the labor board and education department, be created?
    D. Should the law be administered on an *ad hoc* basis, as, for example, under the Connecticut statute?]

This list of questions, incidentally, is not all comprehensive. As a matter of fact, as I now read it, I'm not sure that it's even particularly well-organized. But it does give a pretty fair idea of the panoply of problems presented by prospective legislation in the teacher area.

There may be some value in running down this list of questions preliminarily. The first one, of course, is the threshold question and a very important one. Its concern is whether or not there should be any statute at all. One pertinent conclusion from the experience in other states is that if we get a statute in New York, as I expect we will, the pace of teacher organization, recognition, and bargaining will increase dramatically.

If there is to be a statute, should school teachers be lumped in with other public employees or should they be dealt with in a separate statute? There are presently eight states with statutes specifically requiring local school boards to engage in collective negotiations with teacher representatives. (I make that statement somewhat reluctantly, not having read as yet today's issue of the *New York Times*. Things move quickly in this area.) The eight states are these: on the West Coast: California, Oregon, and Washington; in the Midwest: Wisconsin and Michigan; in the East: Connecticut, Massachusetts, and most recently, Rhode Island. Of these eight, three have statutes which lump school teachers in with other public employees, the three being Wisconsin, Michigan, and Massachusetts. The other five deal with school teachers separately, these being California, Oregon, Washington, Connecticut, and Rhode Island.

We next get to a complex of questions dealing with representation and unit determination. Should, for example, supervisory personnel be included in the bargaining unit? I don't suppose there is any question which, *in theory,* more basically divides the AFT and the NEA than this one. *In practice,* however, the division seems to be narrowing to the point where it soon may be hard to locate with the aid of a microscope.

Second, with respect to unit determination, should satellite personnel be included? By satellite personnel, I mean such as school psychologists, school social workers, school nurses, etc.—people who are certificated but don't practice in the classroom as a general proposition. I call them "satellite personnel" for want of a better name. I hesitate to say "fellow travellers."

Should the appropriateness of the unit be subject to self-determination? By this I mean, should the group of employees involved themselves determine what the appropriate unit is to be, whether supervisors should be included, etc.?

Should representation be determined by an election, a card count, or examination of membership lists? Who, indeed, should determine the bargaining unit and conduct the representation election?

Should there be exclusive or proportional representation? Only one of the eight states has proportional representation currently, that one being California. The Taylor bill, though, which is the Governor's bill in the State of New York, and which has not as yet been passed by both houses of the legislature, does, as I read it, provide for some experimentation with proportional representation.

We move down next to unfair labor practices. Should the statute make it illegal for school boards and administrators to discriminate against teachers on the basis of membership or non-membership, or to interfere with their organizational efforts, or, indeed, to take *any part* in the organizational efforts?

Should there be a duty-to-bargain clause?

Should the "union shop" be authorized? The "checkoff" of dues?

Next we get to the matter of negotiations. Should the statute indicate the scope or subjects of negotiation? If so, what should that scope be?

Should a written, signed agreement be provided for?

Should the statute set the duration of agreements?

Who should negotiate for school boards? Incidentally, this question was skirted several times yesterday afternoon. I was hoping that out of the combined experience of those gathered here we might gain some wisdom as to what the ideal constituency would be for a bargaining team for a school board. We may have occasion to get into that matter this morning.

We move next to strikes and quasi-strike methods. Should the statute declare the strike to be illegal, and, if so, what of the new techniques of bargaining pressure which have been developed—"sanctions," mass "resignations," the *partial* withholding of services, "working to rule"? Are the latter to be defined as "strikes" within the meaning of an illegal strike provision in a statute, or are they not?

If strikes are to be made illegal, what penalties should be imposed? On the individuals? On the employee organizations?

I read a highly interesting decision out of Michigan recently which demonstrates a booby-trap existing in this area of statutory sanctions against the strike. The case arose in Flint and was decided on June 1. They've had a rash of teacher strikes in Michigan, a substantial percentage of which have been called and conducted, interestingly, by the NEA. It was an EA affiliate in Flint which had, as I recall, threatened a strike. They didn't call it a strike; they called it "Professional Study Days." In any event, the local Board of Education in Flint went to the local court, the Circuit Court for the County of Genessee, seeking an injunction against this threat of whatever-it-was. The injunction was refused, and for very interesting reasons. The court, sitting *en banc,* unanimously held that the Michigan statute not only made strikes illegal but also established penalties for striking, and that those statutory penalties were the *exclusive* sanctions against a strike by public employees. Since the statute did not specify injunctions as a sanction, no injunction could be granted. I doubt that the promulgators of the Michigan legislation had this interpretation in mind. Be that as it may, drafters of any future legislation must now consider this question, along with the other manifold problems involved.

Next, we get down to the question of what impasse-breaking procedures should be developed for school teacher disputes. Here, of course, we're in the real core, the nub, of the whole problem.

Finally, what should the administering agency be? Should it, as the Federation people contend, be the State Labor Relations Board, or should it be the State Education Department, as frequently contended by NEA personnel, or should it be some new independent agency, such as the public employment relations board which the Taylor bill in New York would create? Or should the law be administered on an *ad hoc* basis, as is done in Connecticut?

With that pump-priming out of the way, let's turn now to our three panelists. I think I need not belabor you with formal introductions. All three are esteemed lawyers from New York City. Our order of presentation will be, first, the beleaguered, and then, in tandem, the beleaguerers. I suggest that you jot down the questions that occur to you as each speaker holds forth, and then after all three have painted themselves into bullseyes, you may have at them.

Our first speaker is Morris Lasker of the firm of Battle, Fowler, Stokes and Kheel. Morris' prime credentials for our purposes are that he serves as counsel to the New Rochelle and Patchogue School Boards, has been a member of the Chappaqua School Board, and has earned status as a kind of ex officio member of the I.L.R. School Extension Division Faculty by his readiness to answer the call whenever the I.L.R. conference gong rings.

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Our next speaker, Ernest Fleischman, of the firm of Delson and Gordon, is a real combat veteran of the school teacher wars (if I may so martially refer to them). Since the current campaign began, he has served as counsel for the United Federation of Teachers, the Empire State Federation of Teachers, and, on frequent occasion, has represented the AFT.

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Our last speaker, Donald Wollett, of the firm of Kaye, Scholer, Fierman, Hays and Handler, is a man with whom I feel I may take some liberties. You see, he is a former law professor who has gone straight. When offered the deanship of a respectable law school some years back, he responded that he could not consider taking the job unless there were first declared a 48–hour moratorium on the tenure rules protecting the existing faculty. I should be interested to know whether he still holds this view in his current representation of the NEA. Don has troubleshot for the NEA in many of its most trouble–filled moments and areas over the last several years, and has, in the process, earned the motto (to paraphrase Paladin) "Have briefcase. Will travel."

Thoughts on Appropriate Legislation Covering Collective Bargaining Rights of Teachers in New York State

Morris E. Lasker[*]

THERE MAY have been a time, although one wonders whether the classic description has not always been fictitious, when the teacher stood on the sidelines as an observer of society and social movements. If this were ever true, there is no doubt that the whirlpool of social change has by this day extended its circumference widely enough to have drawn the teaching profession into its orbit. Population explosion and technical revolution, with their concomitants of accelerated urbanization and growth of school districts, have created a national milieu in which the simple rustic school system of American folklore is as much a museum piece as Abe Lincoln's log cabin or Mark Twain's Mississippi River.

It is unnecessary to rehearse for such a knowledgeable group as this the forces which have thrust collective negotiations by teachers and boards of education into the forefront. Without argument among ourselves, we can agree that collective negotiations have "arrived" as an accepted method of dealing between large groups of teachers and their administrators and boards, and that there is every reason to believe that the collective technique will be adopted on a very widespread scale before we have concluded our respective professional lives.

We take off, therefore, from the assumption that collective negotiations are an accepted method of dealing between teachers, administrators, and boards; and the assignment that now faces those of us concerned with this subject is to develop a structure, at the local or state level or both, capable of rendering the process of collective negotiations as efficient and orderly as possible.

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The first item on any such agenda, it seems to me, is the enactment by the legislature of a statute establishing fundamental (one might call them quasi-constitutional) standards defining the rights and obligations of teachers and boards in relation to collective negotiations.

Although it has been an enlightening experience for one like myself, who comes to the subject from the background of a lawyer dealing in industrial relations, to cope with the problems that exist where no legislative guidelines are provided, the enlightenment consists chiefly in making clear how badly such legislative guidelines are needed. It has been traditional in New York State not only that minimum educational standards should be established on a state-wide basis, but that minimum standards for salary, pension, and other working conditions for teachers should also be prescribed at the State level. The enactment by the legislature of a statute establishing fundamentals for collective negotiations would therefore be a logical extension of the traditional approach —which is comforting to those who are concerned with tradition.

Putting aside such sociological satisfaction, it is high time that the State authorities established such standards: not only to assist those boards of education where lack of experience in this technical field causes them to flounder, if not to blunder; but just as much to remove from the already overburdened shoulders of board members the necessity for making important decisions as to labor and personnel matters which much more appropriately should be determined at the State level.

If it is agreed, then, that a statute is required and that it is none too early, our job is to suggest what, in the light of experience, the contents of such a statute should be.

One of the advantages of being a member of the teaching profession is that one is authorized to ask the questions and to leave the answers to others. As a highly qualified professor of law, Walter Oberer has taken advantage of his rights and has put us panelists on the spot to answer a list of searching queries. The comments that follow attempt to cope with his barrage and to throw the ball back to him.

1. Should a statute cover teachers along with other public employees or should they be treated separately?

Reflection on this question has led me to conclude that the only forceful argument favoring teachers being treated separately from other public employees is that educators see themselves as a separate group and would probably prefer to be separately treated. But while this argument may be made forcefully, I am doubtful of its persuasiveness. It is dangerous to rely on personal experience, and yet where there is no history one must fall back on such experience. The longer I have worked at the gratifying process of collective negotiations between teachers and boards, the more I have become convinced of the very substantial similarities of such negotiations and other types of negotiations, primarily industrial negotiations. Unfortunately, I have found on many occasions that such a comparison—that is, between teacher negotiations and industrial negotiations—is regarded unfavorably by those involved in education, sometimes teachers, sometimes administrators, sometimes board members. I do not believe that the comparison is unfavorable or should be so regarded. When we talk of collective negotiations we are talking about a process available for the making of decisions. There is no inherent reason why the process should not be basically similar in many walks of our national and community life. This view is fortified by the fact that the bill submitted in this legislative session by the Taylor Committee does not, of course, distinguish between teachers and other public employees. I think the bill's approach is sound and that there is no necessity to establish a separate structure for the treatment of teachers.

2. The question arising in connection with determination of representatives

(*a*) *The question of units*

When a school board presently faces, or in the future may be compelled to face, the recognition of a representative of its employees, then the state or the board will have to determine who should belong to the employment unit. My own view is that non-supervisory and supervisory personnel should not belong to the same unit. It is true that I come to this view as a result of experience in the field of industrial relations, but, again, I find no reason why the lessons in that sector of our life should not be applied to public employees. Questions of conflict of interest, of division of authority, of strained loyalties, it seems to me are no less real and no less compelling in the field of education than elsewhere. I do recognize that the hundreds of thousands of school districts in New York State are each distinct, with their own personalities, and that general prescriptions may not fit the situation in each case. For this reason perhaps consideration should be given to the Connecticut formula which permits mixed units of supervisory and non-supervisory personnel, but I would be inclined to feel that a determination as to whether such units should be permitted should be made not only by a vote of the employees involved, but also after a decision by the board of education or a public employment relations board, such as proposed by the Taylor Committee, that such a unit was appropriate in the circumstances of that particular district.

(b) *Should representation be determined by an election or otherwise?*

It seems to me that it would be very unwise for any board of education to assume the responsibility itself of designating a representative without an election, except perhaps in the very rare instance when there may be no question whatsoever as to what group represents the teachers. If such instances exist, as I suppose they may from place to place, I would expect them to become rarer as time goes on, especially if a statute is passed and stimulates the rivalry between the Federation and the Association. An election has the great value of assuring the integrity of the determination, and this advantage, it seems to me, clearly outweighs such disruption as may occur from campaigning and other attendant election procedures.

(c) *Who determines the bargaining unit and conducts the representation election?*

Provided that basic standards are set by the state, localities should be given flexible powers to determine the bargaining units that will best accord with the requirements of the community. I understand this to be the approach of the bill submitted by the Taylor Committee. Once the unit has been defined, representation elections should be conducted by the public employment relations board. The virtues of the election being conducted by such a board are, *first,* that an outside objective party would certify the result and, *second,* that the public employment relations board would be a specialist in the conducting of employee elections, which, of course, a board of education would not.

(d) *Should there be exclusive or proportional representation?*

Representation should be exclusive. Proportional representation plans have been of questionable value in political life. The exclusion of such plans from industrial life does not seem to me to have been fortuitous but to have constituted a clear recognition of the disruption which occurs under such conditions.

(e) *Should representation be essentially for discussion or bilateral determinations?*

I find no real question here. It seems so clear to me that the purpose of representation is to bring about bilateral determinations on the conditions of employment that I find it difficult to believe that serious consideration will, over any substantial period of time, be given to the method of mere discussion; and even in those cases it seems to me that as time goes by the process of "discussion" will evolve into a process of bilateral determination or negotiation.

(f) *Should there be a contract bar?*

If we assume that one of the major purposes of collective negotiations among public employees in governmental units is to provide an element of stability, there is no doubt that the agreements reached between them should endure for a reasonable period of time. Whatever such period of endurance is called, it will have and should have the effect of a contract bar in industrial relations.

3. Unfair labor practices

There is no doubt that a statute would specify the right of a public employee to join or refrain from joining an employee organization. Such a right implies the right to be free from discrimination in the event of joining or refusing to join. Public employers as much as private employers should be obligated not to interfere with such rights, and should be obligated to bargain with representatives that are chosen by the employees.

4. What about the union shop or compulsory membership?

Neither the concept of a union shop nor compulsory membership in a union seems to me appropriate in the field of public employment. Aside from the fact that no one would argue that a teacher cannot be a good teacher without belonging to a teachers' union, neither do any of the considerations with which we have been dealing suggest that the community's welfare requires teachers to belong to unions. In the absence of any such compelling reasons, freedom of association should remain the controlling determinant.

5. Negotiations

(a) *Should the statute indicate the scope or subject matter of negotiations?*

In my opinion the statute should follow the successful example of the National Labor Relations Act and should not attempt to define the scope of bargaining except in quasi-constitutional terms comparable to those of the National Labor Relations Act, i.e., "wages, hours, working conditions."

(b) *Should the statute provide for a written agreement?*

The statute should provide for a written agreement if the representative of the employees requests it. I would expect that this would generally, but not universally, be the case. Some teachers' negotiating committees might prefer the arrangement which already exists in some districts to provide merely for a negotiation procedure and to negotiate items of mutual concern from time to time as they arise.

(c) *Should the statute set the duration of an agreement?*

The statute should authorize the public employment relations board to set a maximum term for the duration of an agreement appropriate to the circumstances of the particular district involved; but, of course, the parties should be permitted to reach an agreement for a shorter period if they desire.

6. What about strikes?

(a) *Should strikes be prohibited?*

The subject of strikes is, of course, not peculiar to education, but its impact is peculiar in the case of public employees. This is especially true in the field of education, where we are dealing with a "perishable product." Time lost by students cannot be regained. Fortunately, the amount of time lost in the strikes to date has been minimal, but it is conceivable that longer strikes may occur and children are entitled to all reasonable protection against that possibility. Bearing in mind that children are the consumers of the education product and that they would bear the impact of a strike by teachers, it seems to me that strikes by teachers should be prohibited by statute. However, this conclusion rests on the assumption that the statute should also provide in every possible way the assurance that boards of education will not reach decisions arbitrarily and capriciously and will negotiate in good faith; that where impasses are reached public agencies will be available to unsnarl the disputes and to reach fair results. But no legal mechanics, of course, can assure that strikes will not occur. In the last analysis that is a question of responsibility on the part of both teachers and boards of education.

Some consideration, it seems to me, might be given to the concept of an emergency injunction against educational strikes—and perhaps some other public strikes—analogous to the Taft-Hartley National Emergency injunction. The education of children is as important as the production of steel; and if it can be proven (and it cannot always be proven) that an emergency exists within the community which makes it necessary to provide for continuing educational services, such a device might be made available to the public. But realism compels the conclusion that such an injunction would prove of limited value were it to be obdurately opposed, since, after all, the injunctive power is available under Conlon–Wadlin and has been flaunted bluntly.

I should think that the anti–strike provisions should be applicable to all forms of work stoppages. However, though I see no moral distinction between "sanctions" and "strikes," there is certainly a factual distinction between refusing to sign a contract with a board of education and refusing to perform a contract after it has been entered into. This factual distinction may or may not be held by the courts to be of legal significance.

(b) *What about penalties?*

It is hard to conceive how anybody familiar with the lack of success of the Conlon–Wadlin approach can continue to suggest that, in the case of public strikes, penalties can be effectively imposed on individual strikers. The proposal of the Taylor Committee that penalties be imposed on the unions is not only imaginative, but, I believe, more likely to be effective than the present statute. However, I question whether removal of the right of certification is the proper penalty and believe, with others, that the removal of a right to a checkoff is the best hope for producing a constructive result.

(c) *The question of impasses*

The impasse problem, of course, is the one area in which there is a clear distinction between public and private employment. The controlling term in private employment is "strike." Time does not permit detailed suggestions as to impasse-breaking procedures. A description of the factors which are necessary, however, would certainly include comprehensiveness, flexibility, and expertise. These requirements seem to be intelligently met in the Taylor Committee bill.

7. Who should be the lucky agency to administer the statute?

Like many others, I have oscillated, if not vacillated, in my thinking on this subject; bouncing from a preference for the State Education Department, to a hankering for the State Labor Relations Board, to a yen for a shiny, brand-new creation. The truth is, it seems to me, that any of the agencies named could satisfactorily administer the statute. At the moment I tend to think that a new agency—for example, the public employment relations board suggested by the Taylor Committee bill, or something analogous to it—would be the most suitable, though I recognize that my reasons are negative. They have to do with the attitude of teachers themselves, that is, that teachers appear to be apprehensive of the Labor Relations Board because of their conviction that the lessons of industrial relations are not appropriate to education, and apprehensive, at least at times, that the Education Department might be partial to boards of education. I do not believe these views are sound, but the important question is not whether they are sound but whether they are held by a sufficiently large number of teachers to cause a lack of confidence in those agencies. I think this may be the case, and the virtue of a public employment relations board is that it would start things off on a fresh basis.

It goes without saying, however, that if the administrative agency is not an educational body, personnel knowledgeable in the education field should be utilized in the administrative agency in dealing with teacher–board questions. This is particularly true in relation to the question of impasses. It makes relatively little difference whether persons knowledgeable in education matters administer an election, for example; but it would make a great deal of difference if persons without experience in the field of education were to act as mediators in an impasse relating to, say, negotiations as to class size, or curriculum questions, or the question of special teachers for emotionally disturbed children, etc.

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No mechanism, of course, will be perfect in accommodating the many interests we have been discussing. Under whatever statute, dissatisfactions may arise and frustrations will occur. But we are ready to move to a new level, recognizing that the world of 1966 requires methods appropriate to our time. It is a healthy sign that teachers are indicating a greater interest in participating in the formulation of educational policies. Intelligent regulation of the relations between teachers and their employers should have the result of releasing creative energies so that together teachers, administrators, and boards will provide a better education for the children of New York and America.

The Necessity for, and Nature of, Legislation Needed Regarding the Employment Relationship in Public Education in New York State

Ernest Fleischman, Esq.[*]

SINCE ONLY eight states, namely California, Connecticut, Massachusetts, Michigan, Oregon, Rhode Island, Washington, and Wisconsin have statutes which provide for some measure of collective bargaining between teachers and school boards, and since collective bargaining agreements have been entered into between teachers' organizations and boards of education in New York State, the question arises as to whether there are any compelling reasons for a statute in this State.

Both the American Federation of Teachers and the National Education Association have gone on record advocating the enactment of legislation which would establish the right of teachers to bargain collectively with school boards through organizations of their own choosing. However, many, if not most of the school boards in New York State, are more than anxious to avoid a formal employer–employee relationship, especially since they view the same as constituting a derogation of their prerogatives concerning the establishment and control of educational policies. This is not surprising because school boards are no different from employers in the private sector of the economy and it would be a rare instance when the latter would welcome the unionization of his employees. In the private sector any union agreement must deprive an employer of a measure of control of his operations and invariably raises the "labor costs." In the sector involving public education, collective bargaining agreements and negotiation procedures not only increase "labor and other costs" but also make teachers partners and codeterminers in matters relating to educational policies.

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Since there is no statute in New York which grants teachers a right to organize and bargain collectively, which right in turn imposes a correlative duty on the school board to bargain in good faith, school boards are legally free to recognize or to refuse to recognize organizations which seek to represent teachers for these purposes. Article 1, Section 17, of the New York State Constitution guarantees to employees, both in the public as well as in the private sector, the right to join organizations of their own choosing. Yet, as it has been interpreted in the leading case of *Quill* v. *Eisenhower,* 13 N.Y.S. 2d, 887, that although it gives public employees the right *to join* such organizations without interference from public employers, at the same time it *does not compel* public employers to bargain with them. As the Court so aptly stated in that case, the constitutional provision is shaped as a shield but cannot be used as a sword.

As we know, however, boards of education have entered into agreements with teacher organizations because of teacher power or because of the hope and expectation that by entering into some sort of a relationship they may dissipate a drive for meaningful benefits, or finally in some very rare instances because they believe that the adoption of an enlightened policy will accord teachers a voice in the establishment of conditions of employment under which they teach and thus improve educational levels.

A statute is needed in New York State, not only to establish the rights of teachers to organize and to bargain collectively through the organization of their own choosing, but also to insure that boards of education will not discriminate against those teachers who select organizations which are not in good favor with such boards. I have in mind particularly the frequently unexpressed antagonism by many school boards towards affiliates of the American Federation of Teachers. Often, where teachers indicate an interest in joining a local of the Federation, the school board on learning of the same, seeks to discourage this by adopting one policy favorable to the Teachers Association and another, unfavorable to the Federation.

To illustrate, a local of the Federation of Teachers was formed at Harborfields, Long Island, and sought to obtain the use of a room at the Junior High School for a regular membership meeting and also the use of the teachers' mail boxes for the purpose of distributing Federation material. Permission for this was requested of the Board of Education, which permission was denied even though the Harborfields Teachers Association, a rival organization, did have the use of the teachers' mail boxes and did distribute through the mail boxes applications for membership in, and literature issued by, the Harborfields Teachers Association, the New York State Teachers Association, the National Educational Association, and the Third Supervisory District Teachers Association.

The Harborfield Teachers Association had unrestricted use of school buildings for meetings and no restrictions were imposed on the Association as to who should attend such meetings.

The Board of Education justified the denial to the Federation of the use of school buildings and mail boxes, on the ground that the Federation is a labor organization, while the Teachers Association is a professional association, since it had registered with the Board of Regents under the Education Law.

Under New York State law every labor organization must register with the Department of Labor under the Labor–Management Practices Act. The definition of a labor organization as contained in that statute, however, is broad enough to cover a typical teachers' association. Section 327 of the Education Law, however, permits a teachers' organization to avoid registering under the Labor–Management Practices Act by registering with the Board of Regents under the Education Law. Any local of the Federation as well as any Association has the option to register under either law.

This antagonism to the Federation manifested in this case by the Harborfields Board of Education permeates most boards of education, superintendents, and supervisory administrative personnel.

Another situation which could be rectified by legislation governing labor relations in the public education field is illustrated by the Plainview events. The Plainview Federation of Teachers, which on three occasions had been selected by the teachers as their representatives, was unable to negotiate an agreement. The Federation contended that the Board had failed and refused to bargain in good faith buttressing its position by citing the Board's refusal to incorporate any agreements reached in a written contract. The Board insisted that any understanding should only appear in the Board's minutes. If a private employer were to adopt this position, it would constitute an unfair labor practice under both the National and New York State Labor Relations Acts.

In view of the general antagonism by boards of education, superintendents, and other supervisory personnel to the entire concept of collective bargaining and the distrust of, and antagonism manifested to, the Federation, a statute is sorely needed which will give teachers the right to organize and freely choose their own representatives.

In drafting such legislation it should be noted that the State Federation of Teachers favors directives which would define bargaining units of teachers as appropriate only where they exclude supervisory personnel. This is particularly relevant in New York State where boards of education, superintendents, and administrative personnel have participated actively in Association functions and have in many instances compelled and coerced teachers to become members of the local, state, and national association organizations. In line with this, the Rosetti bill which was passed by the Assembly in the last session of the Legislature, but which failed to secure passage in the Senate, provided that no bargaining unit would be appropriate which would include both supervisors and non–supervisors.

In order to avoid fragmentization of bargaining power, the Federation, like the National Education Association, supports the concept that the representative chosen by the majority of the teachers should be the exclusive representative of all teachers in the bargaining unit.

The question has often arisen as to the feasibility of the utilization of the "card–check" method of determining majority representative status. It is submitted that such method if adopted would be subject to abuses because of the traditionally close relationship between boards of education, superintendents, and administrative personnel on the one hand and the associations on the other. Furthermore, membership in the Association in many cases is engendered by fear, real or imagined, or a desire to placate and please the superior. Then again, membership in the associations may be for reasons other than for labor relations purposes. A teacher may join for social objectives or because the "Conference Days" are educationally worthwhile. I would suspect that where a teachers' organization demands recognition, that the board in such instance be required to advise all teachers that unless a petition for an election is signed by not less than 25 percent of the teachers and is filed with the board within 45 days of the date of such notice, the board will then feel free to conduct a membership card check through the auspices of the New York State Labor Relations Board, to determine whether or not the said organization represents the majority of the teachers in the appropriate unit. If on the other hand, such a petition is forthcoming, then an election is to be conducted by the New York State Labor Relations Board.

It is also suggested that in such elections the organization receiving a majority of the votes cast be declared the winner. Absent a statutory directive, boards are free to promulgate any arbitrary rule governing elections they deem appropriate. In Yonkers, for example, the Board of Education established a rule which required the winning organization to receive a majority of the votes of the number of teachers eligible to vote in the said election.

It is the Federation's position that the administrative agency in charge of the teacher–board relationship under the envisioned statute should be the New York State Labor Relations Board, which because of its experience and expertise could readily adapt itself to the field of public employment. The Wisconsin Employment Relations Board and the Michigan Labor Mediation Board, which are similar in nature to the New York State Labor Relations Board, have done an admirable job in administering the Wisconsin and Michigan statutes governing public education employee relationships.

Turning now to the essential objective and *raison d'etre* of teacher representation, it is the position of both national teachers' organizations that meaningful and successful relations can only result from bilateral determinations of conditions of employment. Neither organization will be satisfied with consultative status. In a real sense, both want negotiations which reflect good faith efforts to reach agreement on negotiable topics. To this end it is further suggested that contracts negotiated between school boards and teacher organizations be limited to a maximum of two years in duration. A contract of this duration will promote stability yet will not unduly bind either the board or the teachers to terms and conditions which may be stultifying because of the radical changes to which public education is subject. Also, a two-year period will enable the teachers to reevaluate the representation accorded them by the incumbent teacher organization and afford them an opportunity to effect a change in such representation. Of course during the term of the contract, the contract itself would act as a bar to challenge by any outside organization. In the field of policing and remedying unfair labor practices, experience has demonstrated that interference with the rights of employees can best be dealt with through administrative procedures, culminating of course in judicial review and enforcement. Interference with the rights of teachers by boards of education, superintendents, or administrative personnel; the failure or refusal by a board of education to bargain in good faith; and the commission of other unfair labor practices would be processed by the New York State Labor Relations Board. The Wisconsin and Michigan laws are models in this respect and should be followed.

The projected statute should contain a "duty to bargain" clause encompassing the obligation to reduce all agreements into a written document executed by both parties. Other than that, the statute should not be more explicit as to what is meant by bargaining in good faith. Case law and administrative decisions handed down by the National and State Labor Relations Boards provide sufficient guidelines in this respect, and undoubtedly many of these guidelines will be held applicable to public education in teacher–board relationships.

One of the knotty questions is whether there should be a prohibition of a union shop or any form of compulsory membership. Both a local of the American Federation of Teachers in Montana and a local Teachers Association in Missouri have obtained union security provisions in agreements with their respective boards of education, whereby teachers were compelled to join the Federation as a condition of continued employment in the one instance and to join the Association as a condition to obtaining the benefits provided in the salary schedule in the other. It may very well be argued that if the union shop is not appropriate in the public education field, perhaps a so–called "agency arrangement" could be utilized. Under an agency arrangement an employee, although not compelled to join the organization, is required to pay his share of the expenses incurred in running the organization which must negotiate on his behalf as a matter of law. On balance, it would appear that a statute at this time should not provide for the union shop or any form of compulsory membership but the matter should be reexamined at some later date.

There is also a consonance of opinion between the American Federation of Teachers and the National Education Association with respect to the scope of topics which are subject to negotiations. Because teaching is a profession, both organizations have stated that anything which affects salaries, employment conditions, employer–employee relations, and all matters relating to the definition of educational objectives, including, but not limited to, the selection of text books, curriculum, class size, transfers, teacher aides, rotation, duty–free lunch periods, personnel policies, assignments of exceptional students, rest periods, preparation periods, etc., are proper subjects for negotiation. The spectrum of labor relations in public education must necessarily be considerably broader than those in the private sector.

Mr. Charles Cogen, in addressing the American Federation of Teachers convention in 1962, summarized the attitude of the Federation in this connection when he said that nothing concerning the operation of the schools, including curriculum, content, and methodology is immune to the joint decision making and codetermination of collective bargaining and that meaningful collective bargaining is a continuation of the impingement on what ordinarily would be considered, in the absence of such bargaining, management prerogatives.

In order to promote genuine collective bargaining, teachers' organizations should not determine who should represent boards of education and the boards, on the other hand, should not have any veto on who represents the teachers on their bargaining teams. However, in order to have good faith bargaining, participants must be in a position either to make decisions or effectively recommend the same.

Finally, it is the Federation's position that strikes during the term of the contract are not in order and that as a *quid pro quo* for a "no strike" pledge, there should be provisions in the agreement for final and binding arbitration as the final step in the grievance procedure.

However, there should be no prohibition of strikes in connection with the negotiation of "first time" or renewal agreements, but that mechanisms such as mediation, fact–finding, and bilaterally agreed–upon arbitration should be available to resolve impasses. Despite all talk of strikes, it must be noted that in New York, the United Federation of Teachers negotiated its last two agreements without a strike, two successive agreements have been negotiated in Yonkers without a strike, and a new agreement has been negotiated by the Federation in New Rochelle without a strike.

In conclusion, the experience of teacher–board employment relationships has demonstrated that the most satisfactory agreements, whether negotiated by a Federation local as in New York City or by an Association affiliate in New Haven, emerge when patterned on collective bargaining agreements in the private sector, necessarily modified by the many unique problems in public education. Further, successful relations follow when recognition is accorded to the fact that teachers are professionals who must have a partnership role in the determination of educational policies. A statute establishing the suggested guidelines is not only desirable but necessary to obtain these objectives.

Selective Comments on Legislation Governing Employer-Employee Relations in the Public Schools

Donald Wollett[*]

Why Legislation?

In recent years collective agreements reducing to writing policy decisions jointly reached by local school boards and teacher organizations have been executed in New York City, Rochester, Yonkers, and New Rochelle, New York; New Haven and Stratford, Connecticut; Newark, New Jersey; Milwaukee, Philadelphia, Detroit, and Denver. Such agreements have also been consummated in several middle-sized communities in Wisconsin; well over 100 comprehensive group agreements have been reached in Michigan; over 30 have been executed in Connecticut; and before the calendar year 1966 is over, will predictably be commonplace in Massachusetts and Washington.

Teacher representation elections have recently resulted in the designation of bargaining agents in Toledo, Ohio; Providence, Rhode Island; Boston; and Chicago. Furthermore, the condition of teacher restiveness and ferment in such major cities as Buffalo; Washington, D.C.; St. Louis; Minneapolis–St. Paul; and New Orleans, and such states as Delaware, Florida, Kentucky, Utah, Ohio, Indiana, and Illinois is such that it seems reasonable to expect that most of them will be deeply affected by the movement toward bilateral formulation of local school policies by the end of the next school year.

Finally, it should be noted that the drive for organized teacher participation in the basic decisions affecting working conditions has reached beyond the 12th grade and into higher education, primarily, but not exclusively, in the community colleges. Some of the major four-year institutions have also been affected, e.g., St. John's University, San Jose State, San Francisco State, and the University of Illinois (Chicago campus).

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Some of these developments have occurred pursuant to state statutes, e.g., Wisconsin, Michigan, Connecticut, Massachusetts, Washington, and Rhode Island. Others have occurred extralegally, e.g., New York, New Jersey, Pennsylvania, and Ohio.

The seeds of this rapidly moving phenomenon lie in the depressed salary levels which are a national condition, the horrendous working conditions which are characteristic of the large urban systems, the archaic personnel practices which are commonplace, and the changing sexual complexion of the teaching force. These seeds have been nourished by the competition between the National Education Association and the American Federation of Teachers, the negativism of most school boards and superintendents toward the reform of personnel administration, and the dramatic change (for the better) in public attitudes and public policies concerning the importance of the educational enterprise.

Teachers have become convinced that, if they are to acquire on-the-job authority commensurate with their responsibilities, they must organize into cohesive, well-disciplined local organizations with the central objective of achieving bargaining status and negotiating over salaries, terms, and conditions of employment, and related matters which substantially affect their total working environment.

Since salary increases are a tangible and appealing objective, teachers usually mobilize around a money program as the central pivot for building an effective and cohesive local organization. But their underlying motive is the quest for power, sometimes the diffuse but none the less urgent need to exercise some power of self-determination over their environment, sometimes a cruder desire to "put down the boss."

On the other hand, school boards (and, more often than not, superintendents) properly view the drive of teachers for a direct and meaningful involvement, through structured negotiations, in the making and administration of local school policy as a threat to their prerogatives. Sovereignty, unilateralism, and patronizing paternalism are deeply ingrained in the traditions and psychology of local school management. The liturgy of such organizations as the National School Boards Association is full of grand talk about improving the quality of education through the advancement of professionalism of the teaching staff and the conditions under which they practice that profession. But the usual fact is (at least in my experience) that local school managers typically have little respect for, or understanding of, teachers and their aspirations. I know, for example, of no group of managers who are less likely to be concerned over high turnover (and the conditions which cause it) or who are more willing to replace experienced personnel with inexperienced personnel without serious regard for the impact on the quality of services provided than are school boards.

Accordingly, efforts by teachers to organize into effective local organizations and to achieve partnership status at the bargaining table are characteristically resisted with vigor, if not intransigence, by most school boards and superintendents. In the absence of legislation, disputes over representation, as they are called in the private sector, usually either lie unresolved and remain a diverting source of teacher discontent and hostility or are finally disposed of by the exercise of self–help on the part of the teachers, e.g., strikes, sanctions, or "work–to–rule." Furthermore, the methods pursuant to which such disputes are resolved (again in the absence of legislation) are apt to fall short of meeting the legitimate aspirations of the teachers or to be determined by procedural arrangements which are unsatisfactory.

For instance, the Chicago Teachers Union recently achieved status as the teachers' negotiating representative on the condition that it agree, in the event of an impasse, that the decision of the school board will be final and binding. Negotiations under these circumstances are more apt to result in "organized supplication" than genuine give–and–take bargaining.

Such difficult and basic questions as the scope of the bargaining unit have been resolved unilaterally by school boards on the basis of inadequate evidence, easy (and inappropriate) analogies, ignorance about the significance of the determination, or self–serving judgments which are antithetical to the effective functioning of the bargaining representative or which prejudice the election result (e.g., gerrymandering which favors one of two competing groups or which serves to reduce the power base of the bargaining representative). Moreover, there may be (and in some instances have been) procedures established for management of the election which do not adequately protect secrecy of the ballot, satisfactorily prohibit coercive pressures, or provide adequate access to the voting constituency in the election campaign.

If the question of which organization, if any, is to represent teachers in structured, formalized negotiations is to be resolved in a fair and rational way there must be legislation governing its disposition.

The same thing is true in respect to protection of the rights of teachers to form, organize, and participate in collective negotiations through organizations of their own choosing. If these rights are not guaranteed by law, one can be assured that they will be systematically abridged by denials of tenure, transfers to the boondocks, adverse performance ratings, and all of the other repressive devices which are available to any management which is free of countervailing force in the exercise of power over its employees.

Finally, there is the difficult problem of the ways and means of resolving disputes at the bargaining table over the terms of the agreement which the parties are undertaking to negotiate. While fact–finding has been effectively utilized to settle such disputes in some instances where legislation does not exist, e.g., Newark, New Jersey, and Rochester, New York, it should be noted that fact–finding was preceded in Newark by a two–day strike and in Rochester by the mass resignation of 1,300 teachers.

I think that everyone who has had substantial experience in school board–teacher negotiations would agree that effective third–party intervention as a means for avoiding or resolving a bargaining impasse is not likely in the absence of legislation unless (a) organized teachers resort to some species of self–help, or (b) the teacher organization mobilized sufficient bargaining power in negotiating the predecessor agreement to force the school board to make an advance commitment to third–party intervention.

What Should Be the Scope of the Bargaining Unit?

Speaking as a representative of teachers, I say that the bargaining unit should be as broad as possible, consistent with the effective functioning of the representative selected by the members of the unit. To put this a different way, there should be an underlying community of interest between and among all of the members of the bargaining unit sufficiently overriding so that they can resolve conflicts internally and function collectively as a single, cohesive force vis-à-vis the representatives of management.

I suggest as a working hypothesis that the unit should include all persons who hold jobs the performance of which requires a basic preoccupation with the process of teaching and learning.

It follows that each member of the professional staff (except the superintendent and his assistants) should be a member of the same organization and a member of the same bargaining unit whether he is a classroom teacher, a special services or itinerant teacher, a speech

therapist, a remedial reading teacher, a guidance counsellor, a member of a teaching team, a lecturer on television, a demonstration teacher, a librarian, a department head, a vice-principal or principal, or a subject-matter supervisor.

My judgment is based on pragmatic considerations. The broader the unit and the broader the organization, the bigger the treasury, the larger the resources, and the greater the power to exert bargaining pressure on management.

There are those who argue that such broad bargaining units cannot function effectively because the members will be torn by conflict and rendered impotent. I find little or no merit in this argument, except perhaps as to supervisors (a matter which I shall discuss separately). Community of interest is not the same thing as identity of interest. Identity of interest is impossible to achieve in any collective arrangement of employees. Conflicts lie not only between the different job categories of certificated personnel but also between young teachers and old teachers, experienced teachers and inexperienced teachers, teachers with graduate degrees and teachers who hold only BA degrees, elementary teachers and secondary teachers, etc. The question is whether or not there is enough community of interest so that these conflicts can be resolved internally or whether, on the other hand, the conflicts run so deep that they can only be resolved through the process of independent bargaining representatives negotiating separately with management.

Most of the arguments for "Balkanized" bargaining units can be dismissed as self-serving efforts of competing organizations to gerrymander the unit so as to maximize the possibility of success in the election. For instance, in East Detroit, Michigan, the local affiliate of the AFT demanded that departmental supervisors should be included in the negotiating unit. It so happened that most of them were members of the union. On the other hand, in Grosse Pointe, Michigan, another affiliate of the AFT sought to have all "first assistant" teachers (elementary teachers responsible for their buildings in the absence of the principal) excluded. It so happened that most of them were members of the rival professional association.

The question of the inclusion of the supervisors in the bargaining unit is more difficult than the question of the inclusion of so-called "peripheral" or "satellite" personnel. Here again, I suggest that the test, from the point of view of the effective representation of teachers, should be pragmatic, that is, does community of interest or conflict of interest dominate the relationship between the supervisors and those whom they supervise?

The assumption of the Taft-Hartley Act and Executive Order 10988 is that conflict predominates and that supervisors should, therefore, be excluded. I will admit that I have seen some situations, particularly in the large urban systems, where the facts support this assumption. However, I have seen other situations where this is simply not true. In New Haven, for instance, where the unit is all–inclusive, there were far fewer conflicts between the supervisory member of the bargaining team and the classroom teacher members than there were between the older and younger members of the group. Indeed, it was the supervisory member of the bargaining team who led the fight to include in the contract the provision that performance ratings by principals should be subject to the grievance machinery.

I reject the doctrinaire approach to the question of whether supervisors should be included or excluded. I suggest that the disposition of the question should vary, depending upon the facts in the particular school district, and I applaud the Connecticut legislation which provides that the question of whether supervisors should negotiate with teachers on a unified basis or should be represented separately is determined by a secret ballot vote of each group.

The foregoing comments have not taken into consideration the objection of school managements to the inclusion of supervisors in teacher bargaining units. I recognize the existence of such objections and the basis thereof. But I have not conceived it to be my function to argue a management position which may, in many instances, substantially reduce the ability of the teacher organization to function with maximum effectiveness at the bargaining table.

The appropriate analogy is neither the Taft–Hartley Act nor Executive Order 10988. One should look, rather, to the traditions and bargaining practices of the highly skilled trade unions which, historically, have organized every employee who possesses the skill which lies at the heart of the trade without regard to his position in the managerial hierarchy. For instance, the International Typographical Union organizes everyone who can set type, block a page form, roll a proof, etc., because the mobilization of every member of the labor force who has the skill which is the common denominator of the trade into a single, cohesive organization maximizes bargaining power.

Should the Majority Organization Enjoy the Exclusive Right to Negotiate on Behalf of All Members of the Bargaining Unit?

Assuming, in the words of the Report of Governor Rockefeller's Committee on Public Employee Relations (March 31, 1966), a "rational and workable prior solution of the unit problem," it seems to me to be clear beyond serious argument that the majority organization must have the exclusive right to negotiate on behalf of all employees in the unit. The arguments asserted by the Governor's Committee are persuasive:

> We find a number of advantages in the use of the principle of recognizing a majority organization as exclusive representative for all employees in the unit. There are advantages in the elimination of the possibility that the executives of an agency will play one group of employees or one employee organization off against another. There are advantages in the elimination, for a period, of interorganizational rivalries. There are advantages in discouraging the 'splitting off' of functional groups in the employee organization in order to 'go it on their own.' There are advantages in simplifying and systematizing the administration of employee and personnel relations. There are advantages in an organization's ability to serve all the employees in the unit. Moreover, effectuation of the no-strike policy, which must be achieved in the public interest, is closely related to placing major responsibilities on an employee organization for the conduct of all employees in the unit.

Multiple-organizational bargaining (i.e., on a members-only basis) seems to me to be completely unworkable.

An a priori case can be made for proportional representation. The evidence with which I am familiar overwhelmingly supports the conclusion that such an arrangement will not function effectively. Negotiating committees consisting of representatives drawn from a multiplicity of organizations are torn by interorganizational rivalries and are predictably unable to function in a cohesive, unified way. It may be that the California experiment will produce a body of convincing evidence to the contrary, but I remain skeptical.

What Kind of Impasse Machinery Should Be Established?

The soundness of statutory impasse procedures should be evaluated in terms of their effectiveness in motivating school boards and teacher organizations toward reaching self-imposed, agreed-upon settlements which both accept as an equitable settlement of the matters at issue.

The proposals of the so-called "Taylor bill," which stem from the Report of Governor Rockefeller's Committee, provide for mediation and/or advisory fact-finding coupled with an absolute prohibition on strike action enforced by legal sanctions aimed at the treasury of the responsible employee organization. While these proposals would doubtless substantially improve the present disorderly situation and would probably be effective in preventing many teacher strikes which would otherwise occur, I question whether they will operate so as to encourage negotiated settlements which both parties accept as fair and equitable.

The most serious single obstacle to effective functioning of collective negotiations in public education is the absence of a bargaining force which motivates the school board toward bona fide bargaining and a genuine effort to reach an agreement which the teacher representative can accept with some degree of enthusiasm. In my experience most, although not all, school boards are not "deal-minded." They are not disposed to accept the process as one of give-and-take. They have no sense of crisis and no feeling of urgency. They are content to let "negotiations" drag toward budget submission deadlines, comfortable in the thought that if no agreement has been reached by then, they are free to act unilaterally in accordance with the tradition of managerial sovereignty to which they are accustomed.

Under the proposal of the "Taylor bill," mediation and/or fact-finding could be invoked by either party sixty days prior to the budget submission date. There is, however, no magic in the imposition of this artificial deadline. The fundamental question remains: Will the fact that third-party intervention is available by law motivate the parties toward settlement?

I suggest that the answer is no, unless there is a substantial risk to both parties that submission to mediation and/or fact-finding may produce a worse result (from their respective points of view) than settlement by agreement.

The trouble with the proposals of the "Taylor bill" is that this risk is much greater for the teacher representative than it is for the school board.

The teacher representative runs the risk of an adverse result to which it is bound as a practical matter because it lacks effective veto power. Furthermore, if the third-party interveners apply the criteria (where the central issue is money) that are fashionable in the private sector, the aspirations of the teacher representative to move public education out of the category of a "depressed industry" will be frustrated.

The school board also runs some risk of an adverse result but, unlike the teacher representative, it has the effective power to avoid the risk by rejecting the recommendations of the third party.

Thus, it seems to me that proposals of the "Taylor bill" are not likely to serve as a significant power for agreement. Since the teacher representative is the party which presently lacks relative bargaining power, the results are likely to be either (a) negotiated settlements which do not substantially upgrade teacher salary levels and working conditions to those enjoyed, for example, by other salaried professionals such as engineers in private industry; or (b) where school boards fully exploit their superior bargaining position, the excessive use of mediation and/or fact-finding by teacher representatives; or (c) power assertions by teacher organizations (e.g., strikes, sanctions, mass resignations, or "work-to-rule"), both legal and illegal, in order either (1) to move the school board toward a better offer than third-party intervention is likely to produce or (2) to gain a leg-up in the mediation or fact-finding process.

On the last point it should be remembered that mediators and fact-finders do not operate in a vacuum. Typically they search for a middle ground which will end or prevent an interruption of services. Or, to put this a different way, they aim to find an accommodation of power assertions which both parties find acceptable. The fact-finder whose recommendations ended the teachers' strike in Newark last February stated as follows: "The recommendations . . . are designed to achieve the point toward which the negotiations of the parties were tending to converge before the strike." In other words, his judgment was based upon a prediction as to where the parties would have finally settled if the strike had continued. The pertinent query, which every aggressive teacher organization must ask itself, is whether a third-party intervener will find as much merit in the teachers' case where there has been no antecedent power assertion.

In raising these questions about the impasse machinery proposed by the "Taylor bill," I do not wish to be misunderstood. The "Taylor bill" is based upon the most thoughtful impartial study of collective negotiations in the public sector that has yet been made. I regard the claim that it is a union-busting proposal as a canard in the same category with the cry nineteen years ago that the Taft-Hartley Act was a "slave labor law." There is no doubt in my mind that organizations of public employees will flourish if and when the "Taylor bill" becomes law. We badly need experimentation of the sort called for by the "Taylor bill" so that judgments as to sound public policy can be based on evidence rather than a priori analysis.

I intend only to advance the hypothesis that experience will demonstrate that statutory impasse machinery will be more effective if either (a) the recommendations of the third-party interveners are binding on both parties; or (b) employee organizations are permitted, where the employer refuses to accept those recommendations, to engage in effective self-help.

The Resolution of Impasses in Teacher Negotiations

Introduction

Kurt L. Hanslowe[*]

THE PROBLEM of impasse resolution may be viewed as the nub of the public employee labor relations question. Indeed, it is the nub of any negotiating situation, whether in the labor relations or in the commercial field. Now, the ordinary technique of impasse resolution, following failure of discussions, is disengagement. In the commercial situation there will be a refusal to buy or to sell. In labor relations in the private sector there may occur a strike or lockout. The problem in the public sector is that the lockout is unavailable to the employer in connection with legally mandated public services, and that the strike, at least as a *lawful* technique, is also widely thought to be unacceptable.

The discussion of techniques for the resolution of impasses in teacher negotiations, which follows below, proceeds on several assumptions. It assumes that the employees involved have associated in an organization, the purpose of which, at least in part, is to further the economic interests of these employees. It assumes, further, that the employer has conceded the right of these employees so to organize. It is assumed, finally, that the employer has, in some form, recognized the organization as spokesman for these interests. In other words, it is assumed that some sort of negotiating relationship has been established. Given present legislative trends, these are not unrealistic assumptions.

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Note: As the reader will perceive, this discussion contains little in the way of analytical refinement. Its modest purpose is to portray the panorama of impasse resolution techniques presently in use for public school teacher negotiations. It was thought to be useful to collect these statutory and contractual techniques in one place. In preparing this collection, I received much help and information from my knowledgeable colleague, Robert Doherty of the NYS School of Industrial and Labor Relations, and also from a draft of the Annual (1966) Report of the Committee on the Law of Government Employee Relations (Section of Labor Relations Law, American Bar Association).

Types of Dispute

At the risk of over-simplification, three types of labor disputes may be identified. The first may be called an organizational or representation dispute. This goes to the question of whether a group of employees wishes to be organizationally or collectively represented at all, assuming such employees to have a right so to be represented. In labor law parlance, these are representation questions or representation cases. Subsumed hereunder are such matters as bargaining unit questions; techniques, such as elections, to ascertain the employees' wishes; and so forth. It should be noted that disputes of this sort may involve competing organizations vying for authority to represent some group of employees. So-called jurisdictional disputes are a related, but not identical, type of dispute. These are contests among two or more groups of employees (typically belonging to different organizations) over which of them is to perform certain work. It is my guess that such disputes are unlikely, although perhaps not inconceivable, in the public school field. Representation questions and jurisdictional disputes are beyond the scope of the present discussion. This is not to say that there have been no conflicts in representation cases in the public school field. Issues have arisen and have had to be resolved concerning methods and location of balloting in representation elections and concerning the inclusion in the voting unit of supervisors and satellite personnel such as school nurses, psychologists, and the like.

The second major type of dispute is one over the substantive, generally applicable terms and conditions of employment. In the private sector, such disputes are over the terms and conditions of the collective bargaining agreement. They may be called contract disputes, and are also sometimes characterized as "interest" disputes. In the railroad industry they are referred to as "major disputes." Such disputes are typically resolved through collective bargaining, sometimes assisted by mediation, conciliation, and fact-finding (which is compulsory in certain critical situations both under the Labor Management Relations Act and the Railway Labor Act). Unresolved stalemates may be followed by strikes, lockouts, or other forms of unilateral action. They are occasionally, although not very often, resolved through mutually agreed upon arbitration. In rare instances, as was the case in the railroad work-rule dispute of 1964, such arbitration is governmentally compelled.

The third important type of dispute in the labor relations field involves disputes over the interpretation and application of collective bargaining contracts and work rules already agreed upon. These are disagreements over what the contract or work rule *means,* rather than over what the contract or work rules ought to be. Such disputes most commonly arise in the form of grievances, often, although not exclusively, raised by one or more affected employees. In railroad labor parlance, they are called "minor disputes." They may also be called "rights" disputes, because they involve claimed rights under existing agreements. Most collective bargaining agreements contain a grievance machinery (generally involving several appeal steps) for the processing of grievances. Almost as many agreements provide for the final and binding arbitration of unresolved grievances as the terminal step. The present law is that a union may not strike over an arbitrable grievance even though the collective agreement involved does not contain an explicit no-strike pledge. In the railroad industry, unresolved grievances, or so-called "minor disputes," go to the National Railroad Adjustment Board, a governmental agency created by Congress in the Railway Labor Act. The jurisdiction of this agency is compulsory, and railroad unions may not strike over disputes subject to this jurisdiction.

It has sometimes been suggested that the process of collective bargaining contract negotiations partakes of some of the characteristics of the legislative process, in that it lays down general rules for groups and categories, whereas the grievance process is analogous to adjudication, in that it is concerned with the application and interpretation of these general rules in specific situations.

Impasse Resolution in the Public School Field

We shall now consider arrangements, in the public school field, for the resolution of impasses in the various types of dispute previously described. As indicated, we shall not consider techniques for the resolution of questions concerning representation, but shall limit our observations to disputes over terms and conditions of employment and to grievance disputes. With respect to the two last-mentioned types, there are relevant statutory provisions and also contractually established arrangements in effect.

I. Statutory Machinery for Negotiation Impasse Resolution

A. We turn first to statutory machinery for the resolution of impasses over terms and conditions of employment. CONNECTICUT, in 1965, enacted a statute establishing the right of teachers' representatives to engage in negotiations with boards of education. This statute is applicable only to teachers and other certified professional school employees. A separate Connecticut statute, the Municipal Employees Relations Act (P.A. 159, L. 1965), deals with the organizational and collective bargaining rights of other municipal employees.

The impasse procedures in the teachers' law are as follows:

> (a) In the event of any disagreement as to the terms and conditions of employment between the board of education of any town or regional school district and the organization or organizations of certificated professional employees of said board, selected for the purpose of representation, the disagreement shall be submitted to the secretary of the state board of education for mediation. The parties shall meet with him or his agents and provide such information as he may require. The secretary may recommend a basis for settlement but such recommendations shall not be binding upon the parties. (b) In the event mediation by the secretary of the state board of education provided by subsection (a) of this section shall fail to resolve the disagreement, either party may submit the unresolved issue or issues to an impartial board of three arbitrators. Each party to the dispute shall designate one member of the board and the arbitrators so selected shall select a third. The decision of such board after hearing all the issues, shall be advisory and shall not be binding upon the parties to the dispute. In the event the parties are unable to agree upon a third arbitrator, either party may petition the superior court, or if the court is not in session, a judge thereof, to designate the third arbitrator * * *, or if either party refuses to arbitrate, an action to compel arbitration may be instituted * * *.

A noteworthy feature of this provision is the designation of the Secretary of the State Board of Education in a mediatory capacity. The provision is also illustrative of one device, much more widely found in the public employment field than elsewhere, namely that of "compulsory" arbitration, which, however, is "advisory" only. This seemingly self-contradictory approach represents an effort to assure the employees involved an impasse-resolving mechanism, without at the same time encroaching upon the ultimate authority of the governmental employer with respect to employment conditions.

B. MASSACHUSETTS also legislated in this field in 1965, enacting a Municipal Employee Relations Act which took effect on February 15, 1966, and covers municipal employees (except policemen), including teachers. This act establishes organizing and collective bargaining rights for all such employees, election machinery, exclusive representation, a good faith bargaining duty, employer and employee organization unfair labor practices, and fact-finding. The State Labor Relations Commission is charged with administration of the act.

With respect to bargaining impasses, the statute provides the following:

> (a) If, after a reasonable period of negotiation over the terms of an agreement, a dispute exists between a municipal employer and an employee organization, or if no agreement has been reached sixty days prior to the final date for setting the municipal budget, either party or the parties jointly may petition the state board of conciliation and arbitration to initiate fact finding.
>
> (b) Upon receipt of such petition the board of conciliation and arbitration shall make an investigation to determine if the conditions set forth in paragraph (a) exist. If the board finds that such conditions do exist, it shall initiate fact finding. Prior to such fact finding, or prior to fact finding ordered by the state labor relations commission in accordance with the provisions of section one hundred and seventy-eight L, the board of conciliation and arbitration shall submit to the parties a panel of three qualified disinterested persons from which list the parties shall select one person to serve as the fact finder and shall notify the board of conciliation and arbitration of their choice. If the parties fail to select the fact finder within five calendar days of receipt of the list, the board of conciliation and arbitration shall appoint the person who shall serve as fact finder.
>
> (c) The person selected or appointed as fact finder may establish dates and place of hearings which shall be where feasible in the locality of the municipality involved. Any such hearings shall be conducted in accordance with rules established by the board of conciliation and arbitration. Upon request, the board of conciliation and arbitration shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearings and within sixty days from the date of appointment, unless extended by the board of conciliation and arbitration for good cause shown, the fact finder shall make written findings of fact and recommendations for resolution of the dispute and shall cause the same to be served on the municipal employer and the employee organization involved.
>
> (d) Only employee organizations which are designated or recognized as the exclusive representative * * * shall be proper parties in initiating fact finding proceedings.
>
> (e) The cost of fact finding proceedings under this section shall be divided equally between the municipal employer and said employee organization. Compensation for the fact finder shall be in accordance with a schedule of payment established by the board of conciliation and arbitration.

> (f) Nothing in this section shall be construed to prohibit the fact finder from endeavoring to mediate the dispute in which he has been selected or appointed as fact finder.

Section 178 L., referred to above, provides in relevant part that "[i]f it is alleged [before the State Labor Relations Commission] that either party has refused to bargain collectively, the state labor relations commission shall order fact finding and direct the party at fault to pay the full cost thereof."

The Massachusetts act is unusual in another respect. Section 178 I., dealing with the duty to bargain, provides in part:

> For the purposes of collective bargaining, the representative of the municipal employer and the representative of the employees shall meet at reasonable times, including meetings appropriately related to the budget making process, and shall confer in good faith with respect to wages, hours and other conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and shall execute a written contract incorporating any agreement reached, but neither party shall be compelled to agree to a proposal or to make a concession. In the event that any part or provision of any such agreement is in conflict with any law, ordinance, or by-law, such law, ordinance or by-law shall prevail so long as such conflict remains. If funds are necessary to implement such written agreement, a request for the necessary appropriations shall be submitted to the legislative body. If such request is rejected, the matter shall be returned to the parties for further bargaining. The preceding two sentences shall not apply to agreements reached by school committees in cities and towns in which the provisions of section 34 of Ch. 71 are operative.

Section 34 of Ch. 71 in turn provides in part:

> Every city and town shall annually provide an amount of money sufficient for the support of the public schools as required by this chapter. Upon petition to the superior court, sitting in equity, against a city or town, brought by ten or more taxable inhabitants thereof, or by the mayor of a city, or by the attorney general, alleging that the amount necessary in such city or town for the support of public schools as aforesaid has not been included in the annual budget appropriations for said year, said court may determine the amount of the deficiency, if any, and may order such city and all its officers whose action is necessary to carry out such order, or such town and its treasurer, selectmen and assessors, to provide a sum of money equal to such deficiency, together with a sum equal to twenty-five per cent thereof. * * * Said court may order that the sum equal to the deficiency be appropriated and added to the amounts previously appropriated for the school purposes of such city or town in the year in which such deficiency occurs and may order that the amount in excess of the deficiency be held by such city or towns as a separate account, to be applied to meet the appropriation for school purposes in the following year.

It is also provided therein that when the court order is made prior to the fixing of the annual tax rate, the deficiency is to be made up by taxation; otherwise, the necessary funds are to be raised through borrowing. The interrelationship between these judicial proceedings as to support for public education, and the fact-finding machinery of the Municipal Employee Relations Act is not clear.

C. The MICHIGAN legislature also turned its attention to the topic of public employment relations in 1965 by amending its Public Employment Relations Act. Public employees (except civil service employees of the State), including school teachers, are covered by this act. The right to organize, and to bargain collectively is established, as are procedures for the designation of exclusive collective bargaining representatives. A mutual duty to bargain is imposed, and certain employer unfair labor practices are prohibited. With respect to bargaining impasses, the act provides for fact-finding and non-binding recommendations by the State Labor Mediation Board, which is the agency empowered to administer the act.

D. OREGON likewise enacted legislation in 1965, providing for the election, by certified public school personnel other than superintendents, of a committee to consult with school boards concerning "salaries and related economic policies affecting professional services." School boards are directed to develop procedures for the designation of such representative committees. Impasses in discussions between the parties are to be dealt with in the following manner:

> Whenever it appears to the district school board or the certificated school employees meeting with the board under section 2 of this Act that a persistent disagreement over a matter of salaries or economic policies affecting professional services exists between the board and the employees, the board or the employees may request the appointment of consultants. The consultants shall consist of one member appointed by the board, one member appointed by the employees and one member chosen by the other two members. The consultants may determine a resonable basis for settlement of the disagreement and may recommend such a basis to the board and to the employees.

E. RHODE ISLAND dealt with the problem of teachers' employment relations in 1966 by enactment of a statute providing for "Arbitration of School Teacher Disputes." The statute accords certified teachers in the public school system "the right to negotiate professionally and to bargain collectively . . . and to be represented by an association or labor organization in such negotiation or collective bargaining concerning hours, salary, working conditions and all other terms and conditions of professional employment." Provision is made for determination of exclusive negotiating or bargaining agents on the basis of a majority vote in elections conducted by the State Labor Relations Board. A mutual duty to bargain, which is enforceable by that board, is imposed, which obligation includes "the duty to cause any agreement resulting from negotiations or bargaining to be reduced to a written contract. . . . "

Respecting negotiating or bargaining impasses the statute makes the following provisions:

> In the event that the negotiating or bargaining agent and the school committee are unable within thirty (30) days from and including the date of their first meeting, to reach an agreement on a contract, either of them may request mediation and conciliation upon any and all unresolved issues by the state department of education, the director of labor or from any other source. If mediation and conciliation fail or are not requested, at any time after said 30 days either party may request that any and all unresolved issues shall be submitted to arbitration by sending such request by certified mail, postage prepaid to the other party, setting forth issues to be arbitrated.
>
> Arbitration board—Composition.—Within seven (7) days after arbitration has been requested * * * the negotiating or bargaining agent and the school committee shall select and name one (1) arbitrator and shall immediately thereafter notify each other in writing of the name and address of the person so selected. The two (2) arbitrators so selected and named shall, within ten (10) days from and after their selection agree upon and select and name a third arbitrator. If within said ten (10) days the arbitrators are unable to agree upon the selection of a third arbitrator, such third arbitrator shall be selected in accordance with the rules and procedure of the American Arbitration Association. If the negotiating or bargaining agent agrees with the school committee to a different method of selecting arbitrators, or to a lesser or greater number of arbitrators, or to any particular arbitrator, or if they agree to have the state board of education designate the arbitrator or arbitrators to conduct the arbitration, such agreement shall govern selection of arbitrators, provided, however, that if the state board of education shall be unwilling or shall fail to designate the arbitrator or arbitrators, an alternative method of selection shall be used. The third arbitrator, whether selected as a result of agreement between the two arbitrators previously selected, or selected under the rules of the American Arbitration Association or by the state board of education or by any other method, shall act as chairman.***
>
> Appeal from decision.—The decision of the arbitrators shall be made public and shall be binding upon the certified public school teachers and their representative and the school committee on all matters not involving the expenditure of money. The decision of the arbitrators shall be final and no appeal shall lie therefrom except on the ground that the decision was procured by fraud or that it violates the law, in which case appeals shall be to the superior court. The school com-

> mittee shall within three (3) days after it receives the decision send a true copy thereof by certified or registered mail, postage prepaid, to the department or agency responsible for the preparation of the budget and to the agency which appropriates money for the operation of the schools in the city, town or regional school district involved, if said decision involves the expenditure of money. * * *

F. WASHINGTON is still another state which, in 1965, enacted legislation concerning the employment relations of public school teachers. The statute provides for representation by employee organizations which have won a majority in a secret ballot election. Representatives of such organizations are given the "right, after using established administrative channels, to meet, confer and negotiate with the board of directors of the school district . . . to communicate the considered professional judgment of the certificated staff prior to the final adoption by the board of proposed school policies related to, but not limited to, curriculum, textbook selection, in-service training, student teaching programs, personnel, hiring and assignment practices, leaves of absence, salaries and salary schedules and non-instructional duties."

With respect to impasses, the following is provided:

> In the event that any matter being jointly considered by the employee organization and the board of directors of the school district is not settled by the means provided in this act, either party may request the assistance and advice of a committee composed of educators and school directors appointed by the state superintendent of public instruction. This committee shall make a written report with recommendations to both parties within fifteen days of receipt of the request for assistance. Any recommendations of the committee shall be advisory only and not binding upon the board of directors or the employee organization.

The Washington act also prohibits discrimination against employees because of their exercise of rights established by it. This statute is noteworthy by virtue of the contrast between the breadth of subjects falling within the stated negotiable area, on the one hand, and the apparent absence of extensive machinery for enforcement on the other. Control over the impasse-resolving machinery seems largely to rest in the hands of the government, acting through the State Superintendent of Education.

G. WISCONSIN embarked upon a labor relations program for municipal employees, including teachers, somewhat earlier than have the states discussed so far. Its statute was enacted in 1959, granting municipal employees the right to organize and associate free from employer or employee coercion. An amendment in 1962 empowered the Wisconsin

Employment Relations Board to enforce the statute, including the power to resolve representation questions and to prevent the prohibited practices of interference, coercion, or discrimination against municipal employees. The board is also empowered to institute fact-finding in cases of deadlocked negotiations, as follows:

> (e) *Fact finding*. Fact finding may be initiated in the following circumstances: 1. If after a reasonable period of negotiation the parties are deadlocked, either party or the parties jointly may initiate fact finding; 2. Where an employer or union fails or refuses to meet and negotiate in good faith at reasonable times in a bona fide effort to arrive at a settlement.
>
> (f) Upon receipt of a petition to initiate fact finding, the board shall make an investigation and determine whether or not the condition set forth in par. (e) 1 or 2 has been met and shall certify the results of said investigation. If the certification requires that fact finding be initiated, the board shall appoint from a list established by the board a qualified disinterested person or 3-member panel when jointly requested by the parties, to function as a fact finder.
>
> (g) The fact finder may establish dates and place of hearings which shall be where feasible in the jurisdiction of the municipality involved, and shall conduct said hearings pursuant to rules established by the board. Upon request, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearings, the fact finder shall make written findings of fact and recommendations for solution of the dispute and shall cause the same to be served on the municipal employer and the union.

H. The foregoing discussion has reported all the statutory provisions presently in effect for the resolution of impasses in school teacher negotiations. In 1966, the NEW YORK Legislature deadlocked in something of an impasse of its own on this very question. As was true of the 1965 session of the legislature, a number of bills were introduced to replace the Condon-Wadlin Act with a more comprehensive labor relations program for the state's public employees. One of these was passed by the Senate and had the support of the Governor. It was drafted on the basis of a report, issued March 31, 1966, by a Governor's Committee on Public Employee Relations. Another bill, introduced by Mr. Rosetti, was passed by the Assembly. Each was passed by one chamber of the legislature on June 7, 1966. A number of significant differences between the two bills, relating to method of administration and sanctions to be imposed in the case of strikes, proved impossible to reconcile. The Rosetti bill would, in effect, require each public employer in the state to designate a "labor relations agency" to administer its own employment relations program. The Senate bill, on the other hand, while authorizing local option or decentralized administration, would establish a new state agency, called the public employment relations board, with power to step in when local procedures are lacking or break down.

Following is the Rosetti bill's machinery for the resolution of impasses:

> Thirty days after the commencement of collective bargaining, if no agreement has been reached, the parties shall notify the appropriate labor relations agency of the status of their negotiations. Such labor relations agency shall within five days thereafter designate a person as mediator who will be available to the parties and will appear at all subsequent collective bargaining conferences. If an agreement is not reached by the parties within thirty days thereafter, the dispute shall be submitted to a fact-finding board. Said fact-finding board shall be constituted as follows, unless otherwise agreed between the parties: the employer shall appoint one member, the majority representatives shall appoint another, and the two members so chosen shall appoint a third who shall act as chairman; but if the members designated by the parties are unable to agree upon the appointment of a chairman within three days after the procedure has been invoked, the labor relations agency shall submit a list of five names to the parties and they shall, beginning with the party who initiated the negotiations, alternatively strike names from the list until one remains and he shall then serve as the chairman. Hearings shall commence within five days after the procedure has been initiated. Recommendations shall be made within thirty days after the procedure has been initiated, unless the parties in the interim have negotiated an agreement. * * * The duty to submit to fact-finding procedures shall be enforceable under article seventy-five of the civil practice law and rules as if the parties had agreed to submit the dispute to arbitration, but any recommendations made shall be advisory only, and shall not be binding upon the parties. The provisions of this subdivision in relation to fact finding procedure shall not apply if the existing collective bargaining agreement provides for a different fact finding procedure.

The Senate bill's dispute resolution procedure is more elaborate:

> Resolution of disputes in the course of collective negotiations.
>
> 1. For purposes of this section, an impasse may be deemed to exist if the parties fail to achieve agreement at least sixty days prior to the budget submission date of the public employer.
>
> 2. Public employers are hereby empowered to enter into written agreements with recognized or certified employee organizations setting forth procedures to be invoked in the event of disputes which reach an impasse in the course of collective negotiations. In the absence or upon the failure of such procedures, public employers and employee organizations may request the [public employment relations] board to render assistance as provided in this section, or the board may render such

> assistance on its own motion, as provided in subdivision three of this section.
>
> 3. On request of either party or upon its own motion, as provided in subdivision two of this section, and in the event the board determines that an impasse exists in collective negotiations between such employee organization and a public employer as to the conditions of employment of public employees, the board shall render assistance as follows:
>
> (a) to assist the parties to effect a voluntary resolution of the dispute, the board shall appoint a mediator or mediators representative of the public from a list of qualified persons maintained by the board;
>
> (b) if the impasse continues, the board shall appoint a fact-finding board of not more than three members, each representative of the public, from a list of qualified persons maintained by the board, which fact-finding board shall have, in addition to the powers delegated to it by the board, the power to make public recommendations for the resolution of the dispute;
>
> (c) if the dispute is not resolved at least fifteen days prior to the budget submission date, the fact-finding board, acting by a majority of its members, shall immediately transmit its findings of fact and recommendations for resolution of the dispute to the chief executive officer of the government involved and to the employee organization involved, and shall simultaneously make public such findings and recommendations;
>
> (d) in the event that the findings of fact and recommendations are made public by a fact-finding board established pursuant to procedures agreed upon by the parties under subdivision two of this section, and the impasse continues, the public employment relations board shall have the power to take whatever steps it deems appropriate to resolve the dispute, including the making of recommendations after giving due consideration to the findings of fact and recommendations of such fact-finding board, but no further fact-finding board shall be appointed;
>
> (e) in the event that either the public employer or the employee organization does not accept in whole or part the recommendations of the fact-finding board, the chief executive officer of the government involved shall, within five days after receipt of the findings of fact and recommendations of the fact-finding board, submit to the legislative body of the government involved a copy of the findings of fact and recommendations of the fact-finding board, together with his recommendations for settling the dispute; and the employee organization may submit to such legislative body its recommendations for settling the dispute.

A few general observations may be useful concerning these statutory provisions before we move to our next topic. The first is that, although the statutes differ markedly in extent and detail, a common thread runs through all of them. This is that, with respect to bargaining or negotiating impasses, compulsory fact–finding or advisory, non–binding arbitration is the device commonly employed. It is varyingly called advisory arbitration, fact–finding with power to recommend, or consultation with power to recommend. Rhode Island seems to have gone the farthest in rendering the arbitration decision binding "on all matters not involving the expenditure of money." Concern is, in any event, evidenced throughout with the nature of the link between collective bargaining or negotiations, and the governmental authority to raise and spend revenue. The legislatures are naturally reluctant to relinquish ultimate control in this regard, and, indeed, difficult questions arise as to whether they can or should relinquish such control.

In similar vein, several of the statutes seek to relate the dispute resolution machinery to the budgeting process. This is true of the statutes of Massachusetts and Rhode Island. It is most markedly true of the bill passed by the New York Senate. Evidently, these are efforts to construct a bridge between the economics of collective bargaining and the politics of budget submission and revenue raising. Indeed, this is one of the problematical aspects of the bill passed by the New York Senate with respect to school districts which raise their own revenue. There, it would seem, the legislative body involved, which the bill's impasse procedures envision as the political forum of last resort, is the school board, which presumably is the entity with which the stalemated negotiations have been in progress all along.

A final point is that several of the statutes explicitly recognize the authority of public employers to enter into recognition agreements and written contracts with employee organizations. The Massachusetts act makes this an explicit duty. The same is true of the Rhode Island statute. The Rosetti bill is of similar vein. The bill passed by the New York Senate, while leaving the matter of exclusive representation open, would authorize the execution of written agreements. Thus, the trend is clearly in the direction of overriding any obstacles to the authority of public employers to recognize, deal, and contract with employee organizations.

II. Contractual Machinery for Negotiation Impasse Resolution

Indeed, this trend is manifest in New York State which, as indicated, does not at this time have legislation providing a framework for collective bargaining in public employment. A number of formal relationships have, nevertheless, been established between school boards and teachers' organizations. In several instances exclusive recognition has been accorded to teachers' organizations and written agreements have been entered into.

One aspect of several of these agreements is of interest in connection with the resolution of bargaining impasses. *The agreements themselves set forth a procedure to be used in the event of such impasses.* The impasse provisions of both the Rosetti bill and of the Senate bill seek to accommodate and give some degree of priority to such agreed upon procedures.

Following are a few illustrative contractual bargaining impasse procedures. An agreement between the New Rochelle (N.Y.) Board of Education and the New Rochelle Teachers Association contained the following paragraph:

> RESOLVING DISAGREEMENT
>
> Recognizing, as they do, their respective responsibilities for the education of the children of the community, the parties accept their obligation to assure the uninterrupted operations of the school system.
>
> To this end the parties pledge themselves to negotiate in good faith such matters as may appropriately be included in an agreement between them, and, in the event of failure to reach agreement, to utilize in good faith such mediatory facilities as may usefully contribute to arriving at agreement between them. In this connection the parties recognize that, in the event that they call upon any third party to assist them in arriving at agreement, such person shall be qualified by general background in the educational field and special understanding of the issue at hand. The report of such person shall be advisory only and shall not be binding on the parties. Although the parties include the provisions of this paragraph for the purpose of indicating their pledge to the community to prevent the interruption of the operation of the school system, they nevertheless reiterate that each of them will make every effort to reach agreement at the local level where important details of the needs of the school system can most clearly and thoroughly be understood.
>
> COSTS
>
> Any costs and expenses which may be incurred in securing and utilizing the services of any person or persons in a mediatory capacity shall be shared equally by the Board and the Association.

The agreement between the Rochester (N.Y.) Board of Education and the Rochester Teachers Association establishes the following procedure:

> 3. Agreements reached by the negotiating committees shall be submitted in writing to the Board of Education and the Association for ratification.
>
> 4. Upon ratification, the agreements shall be signed by the Presidents of both parties.

> 5. If the negotiating committees are unable to reach agreement, the Board of Education shall meet jointly with the negotiating committees in Executive Session to continue negotiations.
>
> 6. Agreements reached by the negotiating committees of the Association and the Board of Education in Executive Session shall be submitted in writing to the Board of Education and the Teachers' Representative for ratification.
>
> 7. If the Board of Education and the Negotiating Committee of the Association are unable to reach agreement, the parties shall each select a Representative and the two representatives shall select a third person mutually acceptable to them to act as chairman of an ad hoc Committee. This Committee shall take whatever steps it deems necessary in order to assist the parties to resolve their differences.
>
> 8. The costs for the services of the ad hoc Committee, including per diem fees, if any, and actual and necessary travel and subsistence expenses shall be shared equally by the Board of Education and the Association.

These provisions were part of a first contract negotiated by the Board with the Association, following an election held on December 2, 1964. The election, which was supervised by the American Arbitration Association, ensued as the result of an agreement between the Board, the Association, and the Rochester Federation of Classroom Teachers (AFT), which agreement provided for the arbitration of certain contested election procedures. The impasse machinery quoted above was invoked after unsuccessful negotiations between December 1965 and March 1966. A three member committee was convened and rendered a report and recommendation on April 5. The recommendation, which called for a substantial wage increase, was accepted by both parties and has been implemented as a result of action by the appropriating agency, which in this instance was the Rochester City Council. Such contractual impasse procedures thus offer an alternative to the statutory procedures already described. Indeed, as mentioned earlier, both the Rosetti bill and the Senate bill would accommodate such procedures. Thus, the Rosetti bill's impasse provisions end with the following sentence: "The provisions of this subdivision in relation to fact finding procedure shall not apply if the existing collective bargaining agreement provides for a different fact finding procedure." The Senate bill would empower public employers "to enter into written agreements with recognized or certified employee organizations setting forth procedures to be invoked in the event of disputes which reach an impasse in the course of collective negotiations." The bill's own procedures would come into play only in "the absence or upon the failure of such [contractual] procedures."

III. *Grievance Machinery*

We turn, finally, to the handling of grievances, or so-called minor disputes. In the typical labor relations context, these are problems concerning the interpretation or application of existing contract terms. And, as suggested earlier, the typical labor agreement contains a grievance and arbitration machinery for the processing and resolution of such disputes. Examination of a number of agreements recently negotiated by boards of education reveals that multistep grievance machineries are generally included in such agreements. There appears, however, to be some reluctance to accept fully binding arbitration as the terminal step. There is recognition, also, that, whereas ordinary, private labor arbitration is almost exclusively concerned with the interpretation of the labor agreement because private employment conditions are largely governed by the contract and there is in private labor arbitration relatively little concern with statutory matters (such as, for instance, minimum wage laws), the employment conditions of the public employee are fixed not only by contract but also, to a considerable extent, by statute, public policy, and administrative regulation.

A. Before examining contractual grievance machinery, it is appropriate to note the statutory provisions enacted in New York State respecting grievance procedures for employees of local governments (other than New York City). The statute (N.Y. General Municipal Law Article 16) provides that every public employee, including school teachers, has a right to present grievances free from interference, discrimination, or reprisal and to be represented at all stages of the grievance procedure. The statute further directs all local governments, other than New York City, which employ one hundred or more employees, to establish grievance procedures for their employees pursuant to the statute, unless they had established, on or before October 1, 1963, and maintained thereafter a two-stage grievance procedure. The procedure required by the statute to be established, calls for two procedural stages and an appellate stage. The first stage is with the employee's immediate supervisor. The second stage is a review at the department or agency head level. The third stage is an appeal to a grievance board designated by the chief executive officer of the local government involved. Such grievance boards are empowered to make advisory recommendations. Grievances are defined in the statute as claimed violations or inequitable applications of existing laws, rules, procedures, or administrative orders relating to working conditions, other than matters involving rates of compensation, retirement benefits, or disciplinary proceedings or any matters otherwise reviewable by law or by rule or regulation having the effect of law.

Governments employing less than one hundred employees are permitted but not required to establish grievance procedures.

It will be seen that the exceptions to the definition of what is a grievance are quite broad. It is perhaps also somewhat questionable how satisfactory is the provision that the appellate tribunal, the grievance board, is to be appointed by and to serve at the pleasure of the chief executive of the government involved, in other words the employer. Finally, there may be some question as to how widely such grievance procedures are apt to be used in the absence of formally established and recognized employee representatives in the form of an employee organization.

B. Turning now to *contractual grievance procedures,* it may be useful to set one out in full, so as to convey a picture of the kind of administrative mechanism which is involved. Below appears the grievance procedure contained in the 1965 contract between the Detroit Board of Education and the Detroit Federation of Teachers:

> XXV. GRIEVANCE PROCEDURE
>
> A. A grievance is a complaint submitted as a grievance (see Section B, Step 1) involving the work situation, or that there has been a deviation from, or a misinterpretation or misapplication of a practice or policy; or that there has been a violation, misinterpretation, or misapplication of any provision of this Agreement.
>
> B. *Procedure for Adjustment of Problems and Grievances*
>
> Problems and grievances shall be presented and adjusted in accordance with the following procedures:
>
> The teacher with a problem may first discuss the matter with the principal, directly or accompanied by the Union building representative, with the objective of resolving the matter informally.
>
> STEP 1. In the event the matter is not resolved informally, the problem, stated in writing, may be lodged with or submitted as a grievance to the principal of the school in which the grievance arises within a reasonable time following the act or condition which is the basis of the grievance.
>
> a. A grievance may be lodged and thereafter discussed with the principal:
>
> (1) by a teacher accompanied by a Union representative
>
> (2) through a Union representative if the teacher so requests
>
> (3) by a Union representative in the name of the Union.
>
> b. Within ten school days after receiving the grievance, the principal shall state his decision in writing, together with the supporting reasons, and shall furnish one copy to the teacher, if any, who lodged the grievance, and two copies to the Union representatives.

STEP 2. Within ten school days after receiving the decision of the principal the aggrieved teacher may, on his own or through the Union office, or the Union in its own name may, appeal from the decision at Step 1 to the Field Executive. The appeal shall be in writing and shall be accompanied by a copy of the decision at Step 1.

a. Within ten school days after delivery of the appeal, the Field Executive shall investigate the grievance, including giving all persons who participated in Step 1 and representatives from the Union Office a reasonable opportunity to be heard. Upon request of the Field Executive or the Union, all parties will meet at the same time.

b. Within fifteen school days after delivery of the appeal the Field Executive shall communicate his decision in writing, together with the supporting reasons, to the aggrieved teacher, if any, to the representative designated by the union who participated in this step, and to the principal.

STEP 3. Within ten school days after receiving the decision of the Superintendent, the Union may appeal the decision in writing to the Board of Education, which shall give the Union opportunity to be heard within twenty school days after delivery of the appeal and shall communicate its decision in writing, together with the supporting reasons, to the Union within twenty-five school days after delivery of the appeal.

STEP 4. If the Union is dissatisfied with the decision of the Board of Education, the Union may within twenty days

(1) submit any grievance under this Agreement to advisory arbitration under the labor arbitration rules of the American Arbitration Association, at the equal expense of the parties;

(2) or if the Union so requests, the Board or its representatives will meet further with the Union to consider fairly and in good faith any other methods of settlement which might be mutually agreed upon, including private (non-governmental) mediation, and binding arbitration.

C. 1. In all steps of the grievance procedure, when it becomes necessary for individuals to be involved during school hours, they shall be excused with pay for that purpose.

2. No teacher at any stage of the grievance procedure will be required to meet with any administrator without Union representation.

D. 1. If a grievance arises from the action of authority higher than the principal of a school, the Union may present such grievance at the appropriate step of the grievance procedure.

2. If a grievance is of such nature as to require immediate action such as may be required in transfer cases, the person acting for the Union may appeal immediately to the office or person empowered to act, and said office or person will resolve the matter jointly with the Union representative. If the matter is not satisfactorily resolved, it may be appealed through the grievance procedure beginning with Step 3.

> E. 1. Failure at any step of this procedure to communicate the decision on a grievance within the specified time limits shall permit lodging an appeal at the next step of this procedure within the time allotted had the decision been given. Failure to appeal a decision within the specified time limits shall be deemed an acceptance of the decision.
>
> 2. The time limits specified in this procedure may be extended, in any specific instance, by mutual agreement in writing.
>
> F. The grievance procedures provided in this Agreement shall be supplementary or cumulative to, rather than exclusive of, any procedures or remedies afforded to any teacher by law.

Illustrative of the circumscriptions which are believed to be necessary to place on the *definition of "grievance"* in a quite elaborate contract and grievance procedure is the following provision in the agreement between the New York City Board of Education and the United Federation of Teachers:

> A "grievance" shall mean a complaint by an employee in the bargaining unit (1) that there has been as to him a violation, inequitable application or misinterpretation of any of the provisions of this agreement or (2) that he has been treated unfairly or inequitably by reason of any act or condition which is contrary to established policy or practice governing or affecting employees, except that the term "grievance" shall not apply to any matter as to which (1) a method of review is prescribed by law, or by any rule or regulation of the State Commissioner of Education having the force and effect of law, or by any By-Law of the Board of Education or (2) the Board of Education is without authority to act.

Interesting variations are emerging with regard to the *terminal step* in the grievance procedure. In some instances the final appeal is to the governing School Board or School Committee itself. The agreement between the New Rochelle Board of Education and the New Rochelle Teachers Association goes further by providing for arbitration, but limiting such arbitration as follows:

> The sole power of the arbitrator shall be to determine whether established policy or the terms of this Agreement have been misinterpreted or inequitably applied in such a manner as to affect the condition or circumstances under which a particular teacher or group of teachers works; and the arbitrator shall have no power or authority to make any decision which modifies, alters or amends any then established policy or term of this Agreement, or which requires the commission of an act prohibited by law or which is violative of the terms of the Agreement. The arbitrator shall not substitute his judgment for that of the Board where the Board's action is not unreasonable. The decision of the arbitrator shall be rendered to the Board and to the Association and shall be advisory only, and no judgment may be entered thereon.

The agreement between the Yonkers Board of Education and the Yonkers Federation of Teachers, after setting up an arbitration machinery, concludes as follows: "The Board [of Education] has the legal responsibility to make a determination in these cases. However, the Board pledges to give careful consideration to and be guided by the recommendations of the Arbitrator in exercising this responsibility. Action will be taken within 30 days."

Still another variation is found in the agreement between the Rochester Board of Education and the Rochester Teachers Association:

> (ii) The parties will attempt to select an arbitrator by mutual agreement. If they are unable to agree on an arbitrator within ten (10) days after notice of arbitration has been received, then the arbitrator shall be selected by the American Arbitration Association. The arbitrator shall be an experienced, impartial and disinterested person of recognized competence in the field of education.
>
> (iii) The arbitrator shall issue his decision not later than twenty (20) calendar days from the date of the closing of the hearings or, if all hearings have been waived, then from the date of transmitting the final statements and proofs to the arbitrator. The decision shall be in writing and shall set forth the arbitrator's opinion and conclusions on the issues submitted. The parties recognize that the Board is legally charged with the responsibility of operating the school system. The sole power of the arbitrator shall be to determine whether established policy or the terms of this agreement have been misinterpreted or inequitably applied and the arbitrator shall have no power to make any decision which modifies, alters or amends any then–established policy or term of this agreement or which requires the commission of an act prohibited by law or which is violative of the terms of the agreement. The arbitrator shall not substitute his judgement for that of the Board where the Board's action is not unreasonable except in the following circumstances: (1) where an issue to be determined by an arbitrator is an issue of fact; or (2) where the issue before the arbitrator involves the interpretation of the terms of this Agreement. The decision of the arbitrator shall be rendered to the Board and to the Association and shall be advisory only and no judgment may be entered thereon.

A recent agreement between the Philadelphia Board of Public Education and the American Federation of Teachers contained the following "stalemated" language:

> Step 4. The parties agree that it is highly desirable, indeed essential, to provide for a method of expeditious, final and binding determination of every grievance. However, the parties have been unable to agree upon the Federation's proposal that the method shall be arbitration. Since both parties feel that the public interest requires that an agreement shall be signed without further delay; it is agreed that

> upon the request of the Federation made after January 1, 1966, the Board's authorized representatives will meet with representatives of the Federation for the purpose of negotiating and reaching agreement upon the aforesaid issue between them.

Agreements further along the spectrum have, however, been reached. Thus, the New Haven agreement contains the following provision:

> The arbitrator's decision shall be in writing and shall set forth his findings of fact, reasoning and conclusions on the issues submitted. The arbitrator shall be without power or authority to make any decision which requires the commission of an act prohibited by law or which is violative of the terms of this Agreement. The decision of the arbitrator shall be submitted to the Board and to the League and, subject to law, shall be final and binding, provided that the arbitrator shall not usurp the functions of the Board or the proper exercise of its judgment and discretion under law and this Agreement.

Finally, the most recently concluded agreement between the New York City Board of Education and the American Federation of Teachers contains the following provision concerning the binding scope of grievance arbitration:

> The arbitrator shall limit his decision strictly to the application and interpretation of the provisions of this agreement and he shall be without power to make any decision:
>
> 1. Contrary to, or inconsistent with, or modifying or varying in any way, the terms of this agreement or of applicable law or rules or regulations having the force and effect of law;
> 2. Involving Board discretion or Board policy under the provision of this agreement, under Board by-laws or under applicable law, except that he may decide in a particular case based on a provision of this agreement involving Board discretion or Board policy whether or not the Board applied such discretion or policy discriminatorily, i.e., in a manner unreasonably inconsistent with the general practice followed throughout the school system in similar circumstances.
> 3. Limiting or interfering in any way with the powers, duties, and responsibilities of the Board under its by-laws, applicable law, and rules and regulations having the force and effect of law.
>
> The decision of the arbitrator, if made in accordance with his jurisdiction and authority under this agreement, will be accepted as final by the parties to the dispute and both will abide by it.

It is interesting to note, in this connection, the relatively straightforward language of the recently enacted Massachusetts statute:

> The services of the state board of conciliation and arbitration shall be available to municipal employers and employee organizations for purposes of conciliation of grievances or contract disputes and for

> purposes of arbitration of disputes over the interpretation or application of the terms of a written agreement. Nothing in this section shall prevent the use of other arbitration tribunals in the resolution of disputes over the interpretation or application of the terms of written agreements between municipal employers and employee organizations.

Even stronger language is contained in the Rosetti bill which would *require* that, when an agreement is reached on terms and conditions of employment, it is to be reduced to writing, and that "[a]ny dispute arising out of the meaning, application or interpretation of the agreement shall be subject to final and binding arbitration at the request of either party. Each agreement shall provide a grievance and arbitration procedure. The duty to arbitrate created by this subdivision and any arbitration award rendered pursuant to it shall be enforceable under article 75 of the civil practice law and rules." Several of the other bills introduced in the 1966 legislature, but not the one passed by the Senate, would similarly provide for the arbitration of grievances. The Kingston bill, for instance, contains the following:

> When a public employer or a majority representative serves upon the other party and upon the New York state board of mediation a written notice that the parties have been unable to resolve a dispute involving a claim of right under a collective agreement, administrative rule, regulation, or practice, or applicable law, that dispute shall be submitted to arbitration unless a statute or an agreement of the parties make available full and binding review of the merits of all the dispute. The duty to arbitrate created by this paragraph and any arbitration award rendered pursuant to it shall be enforceable under article 75 of the civil practice law and rules as if the parties had agreed to submit to final and binding arbitration all disputes involving the meaning, application, or interpretation of a collective agreement, administrative rule, regulation, or practice, or applicable law, except that no court shall enforce an award that is contrary to statute.

It would seem, therefore, that with respect to grievances, as distinguished from bargaining disputes, a trend toward binding arbitration may be emerging.

C. A final problem relating to contractual grievances processing bears mention. This is the matter of *representation in the grievance procedure*. Contract clauses are common to the effect that there are to be no reprisals against participants in the grievance procedure and that any party in interest is entitled to representation in the procedure, except that such party in interest may not be represented by an officer, agent, or other representative of an employee organization other than the contracting majority representative. The purpose of the exception is obviously to exclude a rival organization from the grievance procedure. This Wisconsin Employment Relations Board* recently had occasion to pass on the validity of such a provision and held it to violate the Wisconsin law which, although providing for exclusive representation by the majority organization, also states "that any individual employee or any minority group of employees in any collective bargaining unit shall have the right at any time to present grievances to their employer in person or through representatives of their own choosing, and the employer shall confer with them in relation thereto." The Wisconsin statute is somewhat more explicit in this respect than are some of the other laws. Consequently it is not clear that denial to a minority organization of participation in the grievance machinery would be deemed generally unlawful.

Conclusion

This concludes our survey of contractual and statutory machinery for the resolution of disputes in the teacher employment field. At least one grave gap in this survey must be noted. Little has been said concerning experience with these various techniques. In part, of course, it is probably too early to tell. It might usefully be reported, however, that in New York City, for example, 450 grievances were filed with the Superintendent of Schools between November 1962 and July 1965, of which 23 went to arbitration. This represents grievances reaching what is at present the third (Superintendent) step of the grievance procedure. The total number of classroom teachers and satellite personnel involved is in the neighborhood of 45,000.

Finally, it might be repeated that there may be a trend toward binding arbitration of grievance disputes, and that apparently the legal obstacles to accepting this form of adjudication of "rights" disputes no longer loom as large as was previously the case. Whether the "advisory" arbitration approach currently common in connection with bargaining, or negotiating, or "interest" disputes will prove to be up to its task in the long run remains to be seen. If it does not, difficult problems indeed will arise in constructing procedures and forums satisfactory alike to public employers, the employees involved, and their organizations. It may then prove necessary to experiment with more binding forms of "interest" adjudication, or with the legitimate use of economic pressure, or with some combination of these.

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* *In the Matter of the Petition of Milwaukee Board of School Directors for Declaratory Ruling*, Case V, No. 9836 DR-I, Decision No. 6833-A (WERB).

Resolution of Impasses in Employee Relations in Public Education

Robert G. Howlett[*]

In the public area, there are five possible means of resolving bargaining disputes after employer and labor organization have reached an impasse: strike, compulsory arbitration, mediation, fact-finding, and politics.[1]

Strike

As of 1966, strikes by public employees are illegal.

> . . . [I]n every case that has been reported, the right of public employees to strike is emphatically denied.[2]

In a recent case, the North Dakota Supreme Court, holding that its "Little Norris-LaGuardia Act" does not apply to municipalities, said a

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[*] Chairman, Michigan Labor Mediation Board.

[1] Four states now authorize substantially all public employees to select an exclusive bargaining representative and require public employers to bargain: Wisconsin (Section 111. 70, Wisc. Stat.); Connecticut (P.A. 159, 1965, and P.A. 298, 1965); Michigan (Mich. Stat. Ann. 17.455 (1)—(16)); Massachusetts (Mass. Gen. Laws Ann., Chapter 40, sec. 40: 4C, and Chapter 149, sec. 149: 178D-178N). Other states authorize various classifications of public employees to engage in collective bargaining. Some of the statutes authorize local units of government to bargain and enter into contracts with exclusive bargaining units, and some require bargaining in limited areas. Among such states are: Alabama, Alaska, California, Delaware, Florida, Idaho, Louisiana, Minnesota, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Washington, and Wyoming.

[2] 31 ALR2d 1142, 1159 (1951).

"strike and picketing in support thereof by city employees [are] illegal." [3]

After World War II, a number of states, following the lead of New York, adopted legislation which prohibits strikes by public employees and provides automatic termination of strikers with re-employment conditioned on stringent penalties.[4] Other states prohibit strikes without specifying penalties.[5] Texas provides loss of civil service and re-employment rights;[6] Hawaii leaves the disciplining or discharge of striking employees to the discretion of public employers.[7]

Michigan adopted the "Condon-Wadlin" principle a few months after New York.[8] But the Michigan statute was not solely negative, as it provided for the mediation of "grievances" inaugurated by a public employer or the majority of "any given group" of public employees. Michigan courts defined "grievances" to include items of the type involved in collective bargaining.[9] "Condon-Wadlin" has not prevented strikes and neither did Michigan's "Condon–Wadlin plus" statute. Between January 1, 1948, and July 31, 1965, there were 13 strikes involving 10,710 public employees.

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[3] *City of Minot v. General Drivers and Helpers Union No. 74, International Brotherhood of Teamsters,* 142 N.W. 2d 612 (N.D., 1966). See also, *Board of Education of Community Unit School System v. Redding,* 32 Ill. 2d 567, 207 N.E. 2d 427 (1965); *Dade County v. Street, Electric Railway and Motor Coach Employees,* 157 S. 2d 176 (Fla. Dis. App., 1963); app. dis. 166 S. 2d 149 (Fla., 1964); cert. den. 379 U.S. 971, 85 S. Ct. 642 (1965); *Delaware River and Bay Authority v. Masters, Mates and Pilots,* 45 N.J. 138, 211 A. 2d 789 (1965); *New York City Transit Authority v. Quill,* 266 N.Y. Supp. 296 (1965) (even in absence of Condon-Wadlin Act, common law prohibited strikes by public employees). In *Los Angeles Metropolitan Transit Authority v. Railroad Trainmen,* 54 Cal. 2d 659 355 P. 2d 906 (1960) (Legislature, in establishing a transit authority, intended to create an employment relationship comparable to that existing in privately owned public utilities; hence employees could legally strike.)

[4] Georgia (Act 730, Acts of 1962), Michigan (Mich. Stat. Ann. 17.455 (1)—(8)), Minnesota (Secs. 179.51—179.58, Minn. Stat., 1957), Ohio (Secs. 4117.01—.05, Ohio Revised Code), Pennsylvania (Sec. 215.1—215.5, Penn. Stat. Ann.), Virginia (Sec. 40-60—40-67, Code of Va., 1950).

[5] Delaware (Section 1313, Del. Code. Ann.), Florida (SB 563, L., 1959), Massachusetts (Sec. 178M and 178N, General Laws of Mass.).

[6] Secs. 1-6, Art. 5154c, Civil Stat.

[7] Secs. 5-7 to 5-12, Revised Laws of Hawaii. The statute also authorizes the Attorney General at his own instance to seek an injunction, and at the request of the Governor and some other agencies, he is required to do so.

[8] Mich. Stat. Ann. 17.455 (1)—(8). The statute was declared constitutional in *City of Detroit v. Division 26, Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America,* 332 Mich. 237, 51 N.W. 2d 228 (1952).

[9] In *Garden City School District v. Labor Mediation Board,* 358 Mich. 258, 99 N.W. 2d 485 (1959), the court said: "The word 'grievance' must be read in the statute in its generally accepted sense, rather than as defined by usage in some contract. We know of no grievance more likely to provoke the sort of dispute which the labor mediation board and PA 1947, No. 336 (Hutchinson Act) are designed to avoid than those concerning wages or salary."

Local officials urge that public employees' strikes should continue to be illegal; employee groups contend that the strike weapon is necessary if collective bargaining in the public area is to be effective.

Arguments are advanced to support the viewpoint that strikes by public employees are illegal:

(1) A strike by public employees is an attack on the sovereignty of the state, a concept which dates from the days when kings ruled.

(2) In our democratic system of government, responsibility for determining public policy is vested in the elected representatives of the people, subject only to a veto power by the executive, and the judicial power to declare legislative acts unconstitutional.[10] Legislative bodies should not be pressured to accede to employees' demands by use of economic force. If city commissions and school boards are "out of step" with their constituents, membership of the legislative body can be changed.

Advocates of the strike weapon urge:

(1) The sovereignty concept is outmoded. Canada, much closer to the Crown than the Yankee rebels, does not look with such disfavor on strikes by public employees as we do in "the states." The Federal Parliament has recently enacted a statute which authorizes strikes, with some limitations, by federal employees.[11] In Ontario, municipal employees, except firemen and policemen, may strike. In Quebec, strikes by provincial employees are not illegal.

(2) Strikes by private employees have as great an impact on the economy and people as strikes by public employees. Cited are the basic industries such as steel, automobile, and transportation; and it is noted that the impact of a transit strike is the same, whether employees are public or private.

(3) Some suggest a distinction between employees engaged in governmental and proprietary functions; that government, when it com-

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[10] The government of some municipalities does not include the veto power by the executive.

[11] Ontario's Labor Relations Act grants municipal employees, except firemen and policemen, the right to strike. The right to strike, with some exceptions, is also recognized by Quebec.

petes with private industry, should be subject to the same rules as those engaged in similar activities as a private employer.[12]

(4) The strike weapon is the only way to make collective bargaining work.

The federal government, in Executive Order No. 10988, does not recognize an employee organization which "asserts the right to strike against the government of the United States or any agency thereof."[13]

The President of the American Federation of State, County & Municipal Employees, which opposes compulsory arbitration but favors the strike as the ultimate weapon, said:

> We do not want the right to strike for the sake of striking. Every repressive law that has ever been passed to prevent us from striking has led to a strike . . . . If you garden for me at my house, the guy can picket the joint, but if you do some gardening in the park department, that is different.
>
> We have found that it is not possible to solve our problems by arbitration; . . .
>
> We [do not] want the right to strike just for the privilege of walking around the building. But we don't think that the government can give or take away the right to strike.[14]

The new Michigan law did not change the prohibition against strikes found in the prior statute:

> No person holding a position by appointment or employment in the government of the state of Michigan, or in the government of any 1 or more of the political subdivisions thereof, or in the public school service, or in any public or special district, or in the service of any authority, commission, or board, or in any other branch of the public service, hereinafter called a 'public employee,' shall strike.[15]

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[12] Some activities are held to be proprietary even though confined almost entirely to government. Airports serving commercial transportation are examples. "The weight of authority supports the view that in the absence of a statute indicating an intention to exempt municipalities from liability in such cases, the maintenance or operation of an airport by a municipal corporation is the exercise of a proprietary function. . . ." 138 ALR 126 (1941).

[13] Section 2, Executive Order 10988.

[14] Jerry Wurf, *Public Employee,* vol. 31, no. 4, May 1966.

[15] Section 2 of Public Employment Relations Act. The statute was amended to make it clear that a strike is a *concerted* activity, a concept absent from the previous statute, which had followed the language of Condon-Wadlin. While the statute *appears* to cover state civil service employees, they are excluded by the Michigan Constitution, which authorizes the "Legislature [to] enact laws providing for the resolution of disputes concerning public employees, except those in the state classified civil service." Article IV, Section 48, 1963 Constitution. The State of Michigan has few unclassified employees, each of the 19 executive departments being limited to a maximum of six.

There have been 11 strikes since Governor Romney signed the Public Employment Relations Act on July 23, 1965, all of them against boards of education. After the first three strikes, the *Detroit Free Press*[16] was moved to say:

> Obviously, Michigan's present version of the Hutchinson Act isn't working, nor is a similar law in New York where transit workers recently tied up the nation's largest city. But the practical steps that have been taken following some of Michigan's strikes suggest terms of a better law. * * *
>
> Rather than public employees striking first and mediating later, there should be requirements for earlier mediation, and for compulsory arbitration if necessary. * * *

The Chairman of the Labor Mediation Board replied:

> To conclude on such scanty evidence that a law is not working is like deciding that the institution of collective bargaining is a failure because a few employees in private industry engage in wildcat strikes. As long as there are people with emotion, laws will, on occasion, be broken.
>
> * * *
>
> You refer to 'a similar law in New York.' New York's Condon–Wadlin Act has only one similarity to Michigan's Public Employment Relations Act. The right to strike is prohibited. The New York statute, which is solely negative, does not require collective bargaining or offer mediation.
>
> The evidence of the past ten months indicates that the Public Employment Relations Act is working. There should be no tinkering with it until there has been sufficient time to determine objectively whether it is working effectively.[17]

Nine of the strikes have involved teachers, five by MFT and four by MEA affiliated groups. While some MEA groups describe their walkouts as "professional days," they withheld their services in concert, the traditional definition of "strike." The largest group of striking teachers involved 1,700 teachers in Flint represented by MEA; the most stubborn, a strike by the Ecorse Federation of Teachers against the Ecorse Board of Education.

There are a number of reasons for these several crises:

(1) The law was given immediate effect by the legislature. A nuclear explosion followed. There have been 560 petitions and 88 unfair labor practice cases filed between July 23, 1965, and June 30, 1966.

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[16] May 14, 1966.

[17] *Detroit Free Press,* May 19, 1966.

Compare this with the 256 representation petitions filed with the Wisconsin Board since 1962 (as of June 21, 1966); 186 in Connecticut; and 132 in Massachusetts (between February 15, 1966, and June 30, 1966).

(2) The inevitable problems of budget and civil service resulted in delays. We transferred one mediator with NLRB experience to trial examiner and another mediator to election supervisor. We secured our second trial examiner in January, our third in March, and added two more early this month. The Labor Mediation Act, applicable to intrastate industry, was also amended to vest jurisdiction in representation and unfair labor practice cases in MLMB. This added to our heavy caseload. Employees found it difficult to understand what took us so long. When your state adopts a public employment relations act, urge your legislature to allow a lead time of six months.

(3) The lack of knowledge of the collective bargaining process by members of city commissions, school boards, and employee organizations is a large factor in the strikes and threatened strikes. Each side has been quick to charge the other with bad faith bargaining. Some school boards continue benign paternalism; some employee groups, convinced of the reasonableness of their proposals and, perhaps feeling a new power, are shocked by an initial "No."

(4) In Michigan, school monies are received from local real estate taxes and state aid. Real estate taxes are divided by county allocation boards between units of government. Determination may not be made until the first week in June, so that school boards do not know the exact amount of local funds they will receive until near the end of the school year. The second source of school funds is state aid. A portion is received from the sales tax; the remainder is appropriated by the legislature, which in recent years has acted at the end of its session in June.[18]

While delay in appropriation of funds may have been used by some school boards as an excuse to stall bargaining, the difficulty has been very real in the minds of many school board members. Teachers wished to complete negotiations by the end of the school year. A large number of school districts approached the end of the school year without agreement on working conditions and wages. The timing of tax allocation and state appropriation will continue to cause bargaining problems, with some salary settlements conditioned on the receipt of a specified amount of funds.

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[18] While some school districts have voted extra millage, a large portion of the funds comes from the allocation of the fifteen mills which, under the constitution, is the limit of taxation of real estate in each county, absent a vote of the people. A new constitutional provision authorizes counties to eliminate allocation boards and raise the millage limit to 18 mills, with a determination of the division between government units made by vote of the people.

In Grand Rapids, where the representation issue is still undetermined, the Board of Education unilaterally adopted a new salary schedule. An unfair labor practice charge has been filed by the Grand Rapids Federation of Teachers.

(5) All teachers' strikes have occurred in southeastern Michigan, all but Flint in the Detroit metropolitan area. It is here that MEA and MFT compete vigorously for members. In Flint, for example, MEA won over MFT by a vote of 1,035 to 701. If MEA is not successful in securing a good contract, it can expect defection from its ranks, enough perhaps to result in victory for MFT the next time around.

(6) Both teacher groups in Michigan contend that Section 2 of PERA is applicable only to economic strikes; hence does not ban a strike following a school board's refusal to bargain in good faith.[19]

There has been no court decision on this issue. Several of Michigan's circuit judges have avoided issuance of injunctions against employees by convincing the strikers to "recess" their strikes and return to the bargaining table. Decision on motions for restraining orders have been held in abeyance pending negotiations. When one judge in Oakland County issued a temporary restraining order against striking school bus drivers, the strike stopped at once. The four circuit judges in Genesee County (Flint) refused a temporary restraining order on the ground that the legislature had specified the sole means of enforcing the prohibition against strikes by the discipline–discharge procedure of Section 6.[20] This section provides that an employee disciplined or discharged for alleged breach of the statute may, on ten days' notice, secure a hearing before his public employer, and, thereafter, an appeal to a circuit court.

An interpretation of the strike prohibition may be forthcoming in Ecorse, where 194 teachers were discharged for striking. The school board has refused to reinstate them. Hearings have been held as required by the statute, and the case appears to be headed for the circuit, and, ultimately, the Supreme Court.[20A]

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[19] Section 10 provides: "It shall be unlawful for a public employer or an official or agent of a public employer . . . (e) to refuse to bargain collectively with the representatives of its public employees. . . ." Section 15 defines collective bargaining in the language of Section 8 (d) of the National Labor Relations Act, except that any agreement is to be included in a "written agreement, contract, ordinance or resolution" instead of a "contract" as specified in Section 8 (d) of NLRA.

[20] Government Employee Relations Report, 145 B-1.

The Michigan statute does not affirmatively provide for the issuance of an injunction against a strike. Already suggestion has been made that the statute should be so amended and to vest in the courts, or other public body, power to levy a fine against a labor organization authorizing a strike, and to remove from such organization its right to represent employees under PERA. The latter is a remedy found in Executive Order 10988, and a suggestion of the New York Governor's Committee on Public Employee Relations in its report issued March 31, 1961.

The several teachers' strikes caused grave concern throughout the state, with editorial comment generally critical of the teachers. Governor Romney called the presidents and chief staff officers of the Michigan Association of School Boards, Michigan Association of School Administrators, Michigan Education Association, and the Michigan Federation of Teachers to his office where they met with the Governor, the Superintendent of Public Instruction, the Chairman of the State Board of Education, and the members of the Labor Mediation Board. The leaders of the four organizations promptly went to work with school boards and teachers' committees in the districts where strikes had occurred or were threatened. They were of major assistance in the resolution of the several impasses, and, except in Ecorse, were instrumental in preventing potential strikes, stopping strikes in effect, and getting school boards and teachers back to the bargaining table.

The strikes had one effect on MLMB. The state budget officials had reduced our proposed budget by $30,000, and the House Ways and Means and Senate Appropriations committees, in spite of our protest, had concurred. The several teachers' strikes brought not only the return of the $30,000, but also an additional $70,000.[21]

Compulsory Arbitration

Compulsory arbitration is advocated on the gound that elimination of the right to strike requires a substitute procedure to resolve impasses.

Compulsory arbitration can take the form of *ad hoc* arbitration, the assignment of jurisdiction to a court of general jurisdiction, or estab-

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[20A] After this paper was completed (July 7, 1966), the Ecorse Board of Education telegraphed the Ecorse Federation of Teachers requesting that collective bargaining be resumed.

[21] Our total budget for *both* mediation and labor relations is $591,947, a modest amount when compared with the amounts authorized for New York's State Labor Relations Board and State Board of Mediation.

lishment of a commission or labor court specifically charged with this function.[22]

Justice Oliver Wendell Holmes once said:

> I do not think the United States would come to an end if [the Supreme Court] lost [its] power to declare an Act of Congress void.[23]

I do not think local government would disappear should a system of compulsory arbitration be the terminal point in governmental collective bargaining. However, this procedure would be a departure from our concept of democratic responsibility. As noted under the section on strikes, final responsibility for determining public policy in our governmental system is vested in the legislature of each governmental entity. The substitution of an arbitrator, whether *ad hoc* or permanent, for the local legislature as final judge of wages, hours, and working conditions of public employees would remove from the representatives of the people a power vested in them.

The people's representatives would be replaced by an individual or agency having no responsibility to the electorate.

A second objection to compulsory arbitration is the damage to free collective bargaining, as negotiators maneuver to place issues before the arbitrator. In the words of Professor Charles M. Rehmus of the University of Michigan:

> Compulsory arbitration inevitably corrodes free collective bargaining. Experience with compulsory arbitration in a number of foreign countries and in several American states such as New Jersey, demonstrates that the very existence of compulsory arbitration legislation discourages parties from making any real attempt to settle their own disputes through collective bargaining. In almost every jurisdiction where arbitration of unresolved issues has been made mandatory the experience has been that the parties prepare for annual arbitration rather than annual negotiation.[24]

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[22] See the summary of the arbitration statutes in the public sector in several states in Belasco, "Resolving Disputes over Contract Terms in the State Public Service: An Analysis," 16 Labor Law Journal 533 (1965).

[23] Quoted in *The Wisdom of the Supreme Court,* p. 60, University of Oklahoma Press (1962).

[24] May 13, 1966, before Labor Committee of Michigan Senate at hearing on HB 3354 to provide compulsory arbitration in disputes involving fire fighters and policemen. The bill had passed the House of Representatives, but the Senate Committee voted four to two against reporting the bill to the Senate. Professor Rehmus is Co-Director of the Institute of Labor & Industrial Relations of the University of Michigan and Wayne State University. For a contrary viewpoint, see Phelp, "Compulsory Arbitration: Some Perspectives," 18 Industrial and Labor Relations Review 81 (1964).

There is support for this position in the experience of the National War Labor Board. There were cases before the Board's Shipbuilding Commission, on which I served, where commission members wrote nearly the complete contract for the parties.[25]

A number of states enacted statutes to require compulsory arbitration in, or governmental seizure of, privately owned public utilities, as a means of resolving labor disputes; but the Supreme Court held these statutes unconstitutional as applicable to interstate utilities because the federal government has preempted the field.[26]

Policemen and fire fighters urge that they differ from other employees who *may* strike, even though strikes are prohibited; whereas, fire fighters and policemen *cannot* strike. While this argument has a certain appeal, it does not change the basic issue. Either the people's representatives will have the final voice in determining municipal policy, *or* the power will be exercised by a third entity without electoral responsibility.

If such a basic change is to be made in our democratic system, it should occur only if it is clearly demonstrated that the need for an exception outweighs departure from a system which has worked well for the past 179 years.

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[25] The Termination Report of the National War Labor Board, Vol. I, page 889, said of the Shipbuilding Commission: "It has been charged that both industry and labor relied too heavily on the government for the settlement of industrial disputes in the shipbuilding industry during the war. Perhaps it might be said that the Commission in its willingness to settle the minute details of the parties' contract encouraged this reliance on the government. Certainly representatives of industry on occasion felt that this was the case. And yet, from labor's point of view, faced with what on occasion were employers who were willing to take advantage, even on minor grievances, of labor's no-strike pledge the Commission would have failed to do its duty and would have seriously jeopardized the effectiveness of the pledge had it refused to settle completely the disputes brought before it. That gamble the Commission steadfastly refused to take."

[26] *Amalgamated Association of Street, Railway and Motor Coach Employees of America v. Wisconsin Employment Relations Board,* 340 U.S. 383, 71 S. Ct. 359 (1951); *Division 1287, Street, Electric Railway and Motor Coach Employees v. Missouri,* 373 U.S. 79, 83 S. Ct. 1657 (1963). The U.S. District Court so held with respect to the public utilities fact-finding procedure of the Michigan Labor Mediation Act. *Grand Rapids City Coach Lines, Inc. v. Howlett,* 137 F. Supp. 667 (D.C.W.D. Mich., 1955). The federal government, in the recent dispute concerning firemen on diesel engines, required compulsory arbitration (S.J. Res. 102, approved by Senate, August 27, 1963, and House of Representatives, August 28, 1963). The national interest emergency dispute procedures of the Labor Management Relations Act (Sections 206 to 212) and the Railway Labor Act (Sections 6 to 10) provide delaying actions, but strikes are legal after the completion of the statutory procedures. Compulsory arbitration has been fairly common in the local transit industry.

A fire fighter representative suggested to me that his constituents could quickly demonstrate that there is a need for this change. "You will see," he said, "mass resignations all over the State of Michigan."

The AFL–CIO Council, in its recent meeting in Bell Harbour, Florida, perhaps recognizing the danger to collective bargaining if an inroad of compulsory arbitration should be made in the public area, said:

> There is substantial evidence that such methods as unilateral appeals procedures and compulsory arbitration do not solve the legitimate grievances of the affected workers and add to the frustrations of both management and labor.
>
> Repressive state statutes designed to punish employees of local and state government who withhold their work have proved to be a barrier to reasonable negotiation and an added impasse to the collective bargaining process

and urged the use of mediation and fact–finding panels with authority to make recommendations for settlement.[27]

President Johnson seems to have hinted at compulsory arbitration when he proposed legislation that "without improperly invading state and local authority, will enable us effectively to deal with strikes that threaten irreparable damage to the national interest."[28]

Assistant Secretary of Labor James Reynolds made an interesting suggestion at a seminar at the University of Chicago.[29] In compulsory arbitration in the public sector, the arbitrator might be limited to accepting *either* the employer proposal *or* the union proposal. He could not compromise. Hopefully, under such a rule, each party would realistically appraise its position, and present the arbitrator with its minimum of acceptability and maximum concession.

The greatest practical objection to compulsory arbitration is that there is no way to guarantee that public employees, dissatisfied with an arbitrator's ruling, will refrain from striking. Those who arbitrate know that one side is generally dissatisfied with a decision. Are public employees less likely to use economic power if conditions of employment with which they are dissatisfied have been ordered by an arbitrator rather than offered by an employer?

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[27] Government Employee Relations Report 130 B-1.

[28] Government Employee Relations Report 123 B-1.

[29] Conference on Public Employment and Collective Bargaining, University of Chicago's Center for Continuing Education, March 11, 1966.

Mediation

Mediation *ought* to be the primary vehicle for reaching agreement in collective bargaining when an impasse is a possibility. Under Michigan's abbreviated experience, it is.

Some weeks ago, I expressed doubt concerning the validity of a statement in a forthcoming report of the Committee on Law of Public Employee Relations of the Labor Relations Law Section of the American Bar Association:

> It is recognized that the role of the mediator would be less useful in this [public] area, than in private industry because here he cannot bring to bear the pressures of lockout or of strike.[30]

I no longer am in doubt. I am convinced, after our experience in recent months when our mediators have gotten down to grips with public sector collective bargaining, that the role of mediators (at least during the first negotiations) is a greater one in the public area than in private industry. The lack of experience by representatives of both employers and employees increases the function of the mediator. He is not only a catalyst for resolution of disputes, but teacher of collective bargaining. One of our mediators said: "We have inherited a monster."

Thomas Hill, Assistant to the President of the Michigan Federation of Teachers, points out that the lack of experience is not surprising and that "the growing pains may continue for the next five years." Private employees, he notes, have had thirty years to arrive at the level of today's sophistication in negotiation.[31]

Mediators in the public sector must have knowledge of many areas which are different than in private industry bargaining. In education mediation, for example, they must understand the teachers' Tenure Act, teacher requirements, arguments on the size of classes, extracurricular activities, state retirement program, source of school board funds, and budgets.

We originally assigned three mediators, two in Detroit and one from out of state, to education cases. All three were law school graduates. It was our thought that only a mediator with at least a Bachelor's degree could function in teachers' bargaining. As the work load increased during the end of the school year, we found it necessary to assign mediators who had not completed four years of college. Our tentative conclusion is that a college degree is not a *sine qua non* for education mediation.

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[30] The Report of the Committee on Law of Public Employee Relations is in manuscript for presentation at the 1966 meeting of the American Bar Association in Montreal, August 7–12, 1966. It will be published in the Proceedings of the 1966 meeting of the Section.

[31] *Grand Rapids Press,* June 26, 1966. I have heard Tom Hill express these same sentiments.

Under Michigan law, the Board "upon its own motion . . . may and, upon the direction of the Governor . . . must take such steps as it may deem expedient to effect a voluntary, amicable, and expeditious adjustment and settlement of the differences and issues between employer and employees. . . ."[32]

Unresolved by our Board is the question whether we should mediate where a strike is in progress. Do we, by calling the parties together, give status to a strike in breach of the statute? Or do we, as representatives of the public, have a responsibility to seek aggressively to effect a settlement? Governor Romney solved our dilemma for us at Ecorse. He told us to do everything possible to get the teachers back to work, pointing out that the school children are the sufferers.

We have hesitated to inject ourselves in any bargaining situations where we have not been invited. Generally, mediation is not effective unless both employer and labor organization are receptive. We believe, however, that in the public sector, we may have delayed too long in some cases, and that the public interest would have been served had we moved in before we were asked.

A charge was made by some labor organization representatives that the retention by school boards of attorneys skilled in representing employers has damaged the bargaining process. These attorneys, it is contended, approach negotiations with teachers' groups as they do bargaining with the skilled representatives of the UAW, Steelworkers, or Rubber Workers. The teachers, with no experience in bargaining, let alone the tough bargaining in which both sides delight in some areas, are, it is said, frightened and antagonized by the attitude.

Our mediators believe the charge overstated. Generally lawyers and consultants with bargaining expertise have been helpful in reaching agreement between school boards and other public employers, and the organizations representing employees. I agree, however, that a lawyer who uses the same technique in school board bargaining as is employed in the atuomotive industry serves neither his client, nor its employees, nor the public.

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[32] The Board may compel the attendance of witnesses in mediation, a power which has been used in only a few instances in the Board's history, and never in recent years. The power is granted by Sections 10 and 11 of the Michigan Labor Mediation Act, which, by reference in Section 7 of PERA, are incorporated in the latter statute.

When PERA was first passed, I was asked frequently whether members of boards of education and city commissions should participate personally in bargaining. I answered that they should not, but should retain knowledgeable professionals to conduct their bargaining; that a school board or city commission, like a corporate board of directors, should confine itself to establishment of general policy and ratification of the agreement made.

I have changed my mind. And our mediators concur.

The lack of knowledge by members of school boards and city commissions is a prime reason for their presence at bargaining sessions to learn how the process works.

Teachers and, to a somewhat lesser extent, other public employees, feel that they should meet members of the policy-making body face to face. Our mediators who have handled school cases are unanimous in their opinion that either the board or a committee of the board should be present at all bargaining sessions. Active bargaining, they believe, should be carried on by staff member, lawyer, or consultant experienced in the bargaining role, but school board members should be present to build and continue rapport with teachers, and to gain an understanding of this new process.

On the other hand, one of the first teachers' contracts signed in the state was negotiated by a lawyer, who is a top technician and is philosophically attuned to the concept of negotiating a fair and reasonable contract for both district and teachers. He entered a seemingly impossible situation, where neither school board members nor teachers' committee had any experience in bargaining. The teachers felt no need of expert representation, as they believed their proposals reasonable, and expected the school board to accept without question. An initial "No" from the board was a shock which almost ended bargaining before it started. This lawyer was able to get the teachers' committee to meet; and in the space of seven meetings, an agreement satisfactory to both parties was completed. Neither school board members nor administrative officials attended the bargaining sessions.

Should not school board members and teachers, both groups public servants, be even more anxious to work for the success of their common enterprise and for good working conditions than are employers and employees in the private sector? And yet, one reason for the drive for public employment relations legislation is the failure of school boards to identify and communicate with teachers. Teachers have often presented their proposals to school boards, only to hear the board president express his appreciation for their presence, then turn to the next item on the agenda—with the teachers' presentation coming to rest in an unread file marked "Teachers' Proposals."

All wisdom is not vested in school boards. Teachers are no less interested in good education for children than are the members of the school board. That some boards have neglected this obvious fact is one reason for the success of organizing drives among teachers.

A lawyer representing boards of education suggested that both public employer and employees be required to submit a statement of their demands to the other party; that a session with a state mediator be held promptly thereafter for the first discussion of the proposals; that neither party be required to discuss any demands not so presented except under specified circumstances; and that the participation of a mediator be mandatory near the end of bargaining. I am not sure that such regulated bargaining is practical. The suggestion may stem from the apparent tendency of teachers to submit new demands during the course of bargaining and after school representatives have believed that all important proposals had been placed on the table.

Fact-Finding

The Michigan Labor Mediation Board had engaged in fact-finding for 18 years prior to the enactment of PERA. The Hutchinson Act provided that public employer or "the majority of any given group of public employees" could request the Board to mediate "grievance," and, in case of impasse, to institute a fact-finding procedure.[33] Fact-finding has been used about ten times per year. Recommendations have been made, even though our statute did not, and does not, affirmatively authorize MLMB to do so. While we have not maintained records on the acceptance of recommendations, we estimate that public employers have accepted the recommendations in about one-half of the cases.

The statute continues the process with only one change: where an exclusive bargaining representative represents employees, the employees' petition for fact-finding must be filed by the bargaining agent.

We had expected that we would be swamped with fact-finding petitions. We were surprised when this did not occur. There were only nine requests for fact-finding during the first eleven months of PERA, seven of which were settled before the formal process was placed in effect.

Discussion with representatives of school boards and the two teacher groups brings these reasons to light:

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[33] See footnote 9 and discussion in text.

(1) Representation proceedings filled the work days of counsel and other representatives of public employers and employees, as well as MLMB, during the first months under PERA.

(2) Then came bargaining. Impasses generally did not occur until late in the spring.

(3) As the end of the school year approached, fact–finding was discussed, but teachers' representatives feared that the process would be time consuming, with no answers received from MLMB until after the end of the school year. A strike seemed a better way to resolve the impasse.

(4) Apparently some school boards hesitated because our trial examiners lack expertise in education matters. While a knowledge of the area may be desirable, it can be overemphasized. Judges and arbitrators decide cases in which they are not experts, aided by counsel for the litigants.

Our Board in 1964 proposed to the legislature a fact–finding procedure for teachers removed from the Labor Mediation Board, but the bill was not reported out of committee.

Fact–finding should include recommendations, otherwise it has little value.

One question we have not resolved is whether fact–finding should be a function of staff trial examiners or assigned to outsiders, such as arbitrators. Two reasons are advanced for turning this work over to outsiders:

(1) Impasses in the public area will tend to develop near the end of the fiscal year (June 30), when public employers are working on their budgets. This will place such a heavy burden on staff trial examiners that recommendations will be delayed; thus defeating one of their purposes.

(2) In Michigan, the Board performs the dual functions of mediation and labor relations. Recommendations for a collective bargaining agreement by a trial examiner who may have issued an unfair labor practice order against a party will necessarily be suspect; hence of lessened value in resolving a deadlock.

Politics

Politics is a means of resolving an impasse; albeit slower than the other methods.

All public employees, and perhaps teachers particularly, are influential members of the public. If a legislative body is "out of step" with public thinking, the membership of the local legislature may change. Public employees can participate in this process.

A recognition of a right by public employees to organize and bargain collectively through an exclusive representative will tend to make employees of municipalities and school boards more conscious of, and active in, local politics. Defeat of school board or city commission members who are adamant in opposition to the needs of employees should make other members more receptive to change.

But it must be recognized that members of a public body and a community may not react as the public employees hope. Ecorse is an example. As this paper is written, the strike has continued for six weeks. Ecorse is a strong union town. Two of the seven-member school board belong to a large, militant UAW local. Two others, one of them the board president, were reelected during the strike. As near as we can determine, all seven members of the board were unanimous in their stand against the teachers and in the discharge of the strikers.

There is another kind of "politics," where the voters do not serve as arbitrator. This is the "behind the scenes" action which is often successful in breaking an impasse.

Anyone experienced in mediation knows of situations where large union A uses its influence on smaller union B to resolve a crisis and effect a settlement. An International Union is often the key to convincing a seemingly immovable local union that an employer proposal should be accepted.

Not unknown in the settlement of disputes is gentle persuasion—and sometimes not so gentle—by a colleague in the business world, a customer, or superior in a company. I suspect that this activity will not be unknown in the public sector. Indeed, I expect there will be more of it on both sides. I am not arguing that the end justifies the means, but I am sure that it often does. But note should be taken of the methods of resolving an impasse which is "politics" as the "total complex of relations between men in society"—though not directly involved with an election.

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These, then, are the methods to resolve an impasse in collective bargaining: strike, compulsory arbitration, mediation, fact-finding, and politics. We will experience all five. Hopefully, both public employers and public employees will recognize their responsibility, not only to each other, but to the public, so that a few years hence we can lecture on the success of collective bargaining in the public area, aided by mediation and fact-finding, but without resort to strikes, compulsory arbitration, or politics.

Grievance Procedures for School Employees

*Benjamin H. Wolf**

EMPLOYEE GRIEVANCES in the private sector are generally governed by procedures established through collective bargaining. The usual grievance procedure is designed to assure the proper administration of the agreement, and it is the agreement itself which provides the rationale for the disposition of the grievance. Although management and labor differ on whether the agreement is the source of all rights or is merely a curb on management's otherwise unlimited prerogatives, most grievances stand or fall depending on whether or not the agreement supports them. For them it is the law of the shop.

This system is eminently workable because there are very few limitations which keep the parties from negotiating whatever clauses they feel are necessary. They can and often do cover every conceivable area affecting the employee. Whatever frustrations they suffer come from bargaining weakness, not because certain areas are off limits.

They are also free to adopt any system they please to provide the sanctions necessary to enforce the agreement. In the vast majority of cases they choose binding arbitration by impartial outsiders.[1] This, too, is an eminently workable arrangement. While the losing party in an arbitration proceeding may be disappointed, he generally recognizes that the system of resolving grievance disputes by arbitration is far superior to a system which depends on economic force such as strikes or lockouts or to a system where the final decision is made by either management or the union.

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* Attorney and Arbitrator.

[1] Robert Coulson, executive vice-president of the American Arbitration Association states, "Almost 95 per cent of our 100,000 collective bargaining agreements contain arbitration clauses." "Experiments in Labor Arbitration," *Labor Law Journal,* vol. 17, no. 5, May 1966.

Grievance handling in the private sector is workable principally because all grievances which arise among employees can be dealt with. Unions may not achieve all they demand in negotiating with employers, but at least they can propose solutions for all their grievances and settle for less. What they fail to achieve one year they can hope to achieve the next. Nothing is impossible. In due time they expect to achieve all.

In the public sector many employee grievances are never placed on the bargaining table because they are taboo; not because they do not exist but because public employees may not bargain in certain areas. The relationship is so structured that certain areas are off limits. This is particularly true for teachers. There are many reasons why collective bargaining agreements of teachers are more limited in scope and more complicated than agreements in the private sector.

First, teachers are civil servants. Their right to organize and bargain collectively has only recently been acknowledged. As government employees, they have had to battle the philosophy that a sovereign cannot contract with its subjects and that government officials cannot delegate their official duties and obligations. As recently as 1962, the Cahokia Illinois Classroom Teachers Association agreement recited that the "Association understands that a Board of Education cannot legally enter into an agreement. . . . "

Second, teachers' employment is governed by state laws, local laws, and board of education bylaws, rules, procedures, regulations, administrative orders, and work rules, all of which emanate from the government and are comparable, therefore, with company rules in the private sector, but with obvious profound differences. The similarity is, nevertheless, vitally important. Employees have no role in the formulation or promulgation of either, except in an indirect and remote way. They are imposed by the employer. Frequently, they are meant for the protection and benefit of the teacher and in this sense are benevolent, but they suffer the faults of all paternalistic systems. They do for the child what the parent thinks best. Not that this is necessarily bad, but it is not very satisfying when the child is an adult with his own ideas of what is good for himself.

Third, few employment situations are so intimately influenced by public opinion. For good or bad, parents are organized and play an influential role in school affairs. School administrators cannot be blamed for keeping a wary eye over their shoulders in the direction of the parents when dealing with teachers.

Fourth, teachers are professionals and have more than an employee's concern with the production process. The philosophy and techniques of education are as much their province as that of school administrators and frequently professional standards and working conditions become so intertwined they cannot be readily separated. New York City teachers, for example, obtained an agreement on class size although the Board of Education regarded it as a matter of educational policy and not negotiable.

Fifth, teacher employment is segmented by the school year. The calendar inexorably intrudes on the relationship. Employment security for the teacher without tenure is measured by the semester. Both the administrator and the teacher are frequently trapped by the need to finish the school year without disruption.

Although there is hardly any limitation to the scope of negotiations, the collective bargaining agreement which is reached in the private sector generally limits the grievance procedure by defining what is a grievance and by stating what rights are reserved to management. Collective bargaining agreements affecting teachers are similarly limited; but, because of the complexities in the relationship, the limitations are more confining. The 1965 agreement between the United Federation of Teachers and the New York City Board of Education states that,

> The term 'grievance' shall not apply to any matter as to which (1) a method of review is prescribed by law, or by any rule or regulation of the State Commissioner or by any by-law of the Board of Education or (2) the Board of Education is without authority to act.

Despite the severe limitation, the New York City agreement has the virtue of being enforceable by binding, impartial arbitration at the terminal step in the grievance procedure. Other school agreements seem to have greater scope but where this is so, binding arbitration is absent.

The Philadelphia contract defines a grievance more broadly to include "any complaint involving the work situation that there is a lack of policy or that a policy or practice is improper or unfair," etc., but the final decision lies with the Superintendent. The union did obtain a written promise to negotiate a clause providing for arbitration.

In Detroit a grievance is also broadly defined but the terminal step is advisory arbitration. The union did obtain a promise that the board would consider binding arbitration in specific cases.

The Newark agreement, which is with an NEA affiliate, also provides for advisory arbitration.

The Rochester agreement not only provides for advisory arbitration, but also hems the arbitrator in with a variety of restrictions:

> The arbitrator shall have no power or authority to make any decision which modifies, alters or amends any then-established policy or term of this agreement or which requires the commission of an act prohibited by law or which is violative of the terms of the agreement. The arbitrator shall not substitute his judgment for that of the Board where the Board's action is not unreasonable.

The terminal step in any grievance procedure is the heart of the procedure and it affects every step in the procedure. Within the limits of the grievance machinery someone must have the final say and who has the final say colors the whole procedure. It makes a vast difference whether the final decision rests with the employer or with an impartial outsider. A recent article in the *Industrial and Labor Relations Review*[2] pointed out that where the final step is binding arbitration by an impartial neutral, there is a high probability that grievances appealed that far will be considered on their procedural and substantive merits, and that this eventuality will motivate both parties to be more objective at the lower levels. "The threat of appeal to a neutral arbitrator contributes to the rationalization of the entire procedure since there are compelling reasons to abandon weak, capricious claims at low levels."

In April 1966, a five-member labor relations panel of experts appointed by Governor Rockefeller after the New York City transit strike, recommended legislation relating to public employee bargaining in New York State.[3] Among other matters it recommended a statute which would grant to public employees the right to organization and representation and empowered the state, local governments, and other political subdivisions to negotiate with and enter into written agreements with employee organizations representing public employees. Though belated, these recommendations will serve a useful purpose in laying to rest once and for all the ghost which still hovers in the background in public employee labor relations. It may end finally and formally the argument that a sovereign employer cannot contract with his employees and the twin theory that for a public official to contract with his employees would be a delegation of duties which had been imposed upon him by the legislature. What the board failed to recommend was a statute authorizing binding arbitration of grievances.

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[2] Harry R. Blaine, Eugene C. Hagburg, and Frederick A. Zeller, "Discipline and Discharge in United States Postal Service: Adverse Action and Appeal," *ILR Review,* vol. 19, no. 1, October 1965.

[3] *Government Employee Relations Report,* No. 135, April 11, 1966.

In New York City, the Mayor's committee proposed a bargaining program which provides:

> Impartial arbitration shall be final and binding to the extent permitted by law.

The reluctance of school officials to broaden the scope of the grievance procedure or to assure the enforcement of contract provisions by binding impartial arbitration does not, of course, solve those grievances which are excluded from coverage. They continue to exist despite the effort to ignore them and they will exert pressure until they are dealt with. One can only speculate as to how much of recent strike activity by public employees is due to grievances swept under the rug by official pronouncements that they were off limits.

Recently, in New York City, two important grievances which had been declared off limits were later resolved by a single arbitration award, a remarkable feat which demonstrates the hypersalutary effect of binding arbitration. The New York City Board of Education announced that the school year would begin two days earlier this September. The UFT defied the Board and stated that the teachers would not report. While this dispute was festering, Mayor Lindsay announced that city employees could go home at 4:00 P.M. only during July and August from then on. There was a violent reaction because they used to enjoy such hours from June 15 to September 15. The law specified only July and August and the Mayor, at first, said he could do nothing about it. The protest was so violent that he relented and the dispute was submitted to Arbitrator Arthur Stark for final and binding decision. Stark held for the employees, principally on the ground of a firmly established past practice.

When this award was made public, the Board of Education revoked its decision to open school two days earlier. Lloyd K. Garrison, president of the board, attributed the decision to the Stark arbitration award.[4]

Binding arbitration by impartial outsiders can have a profound effect upon teacher relations even though the area in which it can operate is circumscribed. Within the scope in which it applies, it can have the following, far-reaching results:

1. It can make any collectively bargained agreement more meaningful. Where the school administrator makes the final decision, the enforcement of any agreement depends on whether the administrator can

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[4] *New York Times*, June 24, 1966.

be persuaded to change his mind. Since the appeal is against a policy or action he has approved, it requires him to reverse himself. How meaningful an agreement can be depends, therefore, on what kind of a man the administrator is. This system does not inspire confidence among teachers. Only the administrator can do so. There are cases where the school board has not only ignored an advisory arbitration award but has even refused to submit the grievance to arbitration, making the procedure an exercise in futility.

2. It may make the grievance procedure more meaningful. Where the grievance machinery is intrainstitutional, there is a strong tendency by the higher-up official to support the first-line official. Reversal of the first-line official's decision implies a lack of confidence in him and undermines his authority. Upper management will rarely want to risk that result. Without an outside review there is hardly any incentive to sustain the grievance. The grievance ladder tends, therefore, to become a system of rubber stamping the first-line supervisor's decision. Advisory arbitration does afford some review of the grievance but its force is by no means as compelling as binding arbitration.

Where there is final, binding arbitration the first-line supervisor can no longer be confident he will be upheld and upper management has the fear of being reversed to counter its reluctance to override the foreman. The result frequently is that grievances are settled at an earlier stage in the procedure.

The cost of binding arbitration by outsiders also serves to discourage the prosecution of weak grievances.

3. It may encourage more careful policy making at the source. Administrators who issue orders are more apt to calculate the effect of the order on the employee if there is binding arbitration in the offing. As a result policy making is changed from that of what needs to be done to how best to do it. Supervisors thereby become more sensitive to the needs of the teacher and grievances are reduced.

In summary, although grievance procedures bargained by teachers are rarely as broad as they need to be, it is possible to improve the handling of those grievances which are allowed by providing for binding arbitration at the terminal step.

Conclusion

Concluding Remarks

James E. Allen

Some of the discussion that I have been hearing here reminds me of the story of the little girl who was preparing for an examination in a course in religion. She had in mind exactly what she thought the question was going to be. It was, "How many kings are there in Judea and Israel?" So she memorized all of the kings in Judea and Israel. But when she got to the examination, the question was, "Tell us the meaning of the Book of Job." She wrote, "I don't know anything about the Book of Job, but the kings of Israel and Judea are. . . ."

I think that to some extent we are tending to take the attitude "I don't know quite what this is, but here is what my position has always been. . . ."

This has been, and is, an extremely important and interesting conference from my point of view. I think that it has been very worthwhile and I am grateful to every one of you for coming and participating, and especially for those who have taken part. I just want to emphasize one or two things.

I'm coming back, really, to ask you to remember the things we had in mind when we started yesterday. That is the basic reason why we are here. We are basically concerned here with seeing to it that the ultimate goal of the education of boys and girls is paramount and that whatever procedures we work out here are in the best interests of the education system. I think this is basic and fundamental.

I personally do not assume that collective negotiations, or whatever you want to call it, is not in the public interest. I believe it is in the public interest. The questions are: What kind of negotiation? How would we set it up? What are the procedures? I do not believe that policies arrived at after the collective negotiations are necessarily a relinquishment of the sovereignty of the people. I think they can strengthen the exercise of sovereignty on the part of the people, if properly arrived at.

The issue here is how do we carry forward into this area and develop a sound plan that is in the interest of all the parties involved? I think we are making substantial progress. I hope that we have given proper attention to where we go from here in these discussions and to how we proceed to bring to the attention of the other parts of the state and other groups in the state, the information, the exchange of views, the positions, and so on that have been taken here.

Again, I want to thank you very much for coming. This is an exciting time in education, because it's a part of this whole interesting era when we are seeking to strengthen the rights and dignity of individuals. This movement which brought us here together is not unlike the civil rights movement. We are trying to find ways to give greater dignity to all individuals and to find procedures in our governmental operations and in our social relations, that will make sure that every individual is able to be an individual and exercise his rights fully, and use fully the capabilities he has. So I think that from this will come not only some of the practical answers that we were talking about, but also a great improvement in the advancement of education in our state.

Discussion

The discussion following the panel presentations centered around the following issues:

1. Board members and school administrators seemed worried about the consequences formalized employee relations procedures would have on the role of the chief school officer. Was he to be considered an agent of the board or a representative of the teachers? A few conferees thought it might be more difficult to recruit top flight people into administration if the superintendent's position *vis à vis* the board and the teachers was not more clearly defined. One of the primary sources of satisfaction for an administrator, it was pointed out, is to secure benefits for his teachers. Under a system of collective negotiations, he might, as an agent of the school board, be placed in a position of opposing teacher requests. He then finds himself being suddenly transformed from the role of an advocate to that of defender of the *status quo*.

Others thought the administrator's authority would erode away by bargaining and strong grievance procedures. One administrator argued, however, that only the superintendent's "authoritarian" power was lost, since he is now subject to the evaluation of his faculty and to arbitration. Other prerogatives remain intact and in fact might be expanded since under negotiations the board orders him certain powers.

2. There were several questions concerning the new role of middle management (principals) under collective bargaining. The general feeling was that in those areas where agreements had been negotiated principals had not been consulted to the degree they might have been. The agreements often did not reflect the experience of this group, and consequently did not always deal realistically with "on–the–job" conditions.

3. The emergence of collective bargaining, some conferees felt, would probably force a clarification, or perhaps revision, of the state education law, particularly in regard to the Commissioner's appellate or judicial authority. The law should make it clear, most participants seemed to feel, that a teacher working under a collective agreement containing a grievance procedure capped by arbitration should not be permitted to appeal an adverse decision to the commission for redress. Local procedure for grievance handling, it was felt, should take precedence over the Commissioner's appellate authority, and the educational statute should make this clear.

4. Not all conferees were persuaded that there was a real need for legislation covering the employment relationship for teachers. There was even wider disagreement, should the New York State Legislature act on this matter, over the question as to whether teachers should be included with other categories of public employees or should be singled out for special treatment. The group was reminded that of the eight statutes providing for collective bargaining for teachers, five cover teachers only.

The argument that teachers have rather special employment arrangements was countered by the argument that unless all public employees have the same procedures, an element of instability is built into the employer–employee relationship. There might be agitation from other groups of public employees to be covered by the same procedures. Thus the legislature will continually be under pressure to revise existing statutes.

5. There seemed to be general concern among the board members and school administrator groups, about developments in impasse breaking devices, both for negotiation impasses and for grievances. The using of outside neutrals to settle disputes, these groups felt, would over a time tend to whittle away board and administrative prerogatives.

6. The view was expressed that collective bargaining in education might lead to joint bargaining by groups of small school districts and their respective teacher organizations. Some members felt that eventually joint bargaining would lead to further consolidation of school districts.

7. The issue that provoked the greatest amount of discussion centered on the question of sovereignty. Could a school board which derives its powers from the sovereign people, some conferees asked, share any of its authority with an employee organization? The position taken by many representatives of school boards and by several school administrators seemed to be that school boards, representing the sovereign power of the people, should not, and perhaps could not, surrender any of this power to determine how public service should be rendered to the public. Collective bargaining or any type of formal bilateral determination of conditions of work, these conferees felt, would tend to violate this ancient principle of democratic rule.

Most of the panelists and the representatives of the teacher organizations thought differently. The sovereign, so ran the counter argument, is by no means an absolute sovereign, and for certain purposes must go to the market place to arrange for goods and services. And by doing so, he must come to terms with those with whom he is dealing. The manner in which a school board sets the employment conditions for teachers is in this respect not different from contracting with private suppliers for other kinds of services. There is no question then, according to this view, that governmental sovereignty is subject to limitations. The question is: Ought it to be limited in the employment field? The answer was readily supplied: Yes it should, at least as far as school boards are concerned. The desire on the part of teachers to be considered equal partners in setting employment conditions has reached such a level that a structure must be created to accommodate these aspirations. The concept of sovereignty, this group seemed to feel, was no longer relevant to the employment relationship in public life and it should not be employed to frustrate the will of public school teachers.

R. E. D.